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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF:WL-MH

July 19, 1989

MEMORANDUM

TO: Members, Board of Land and Natural Resources

FROM: William W. Paty, Chairperson

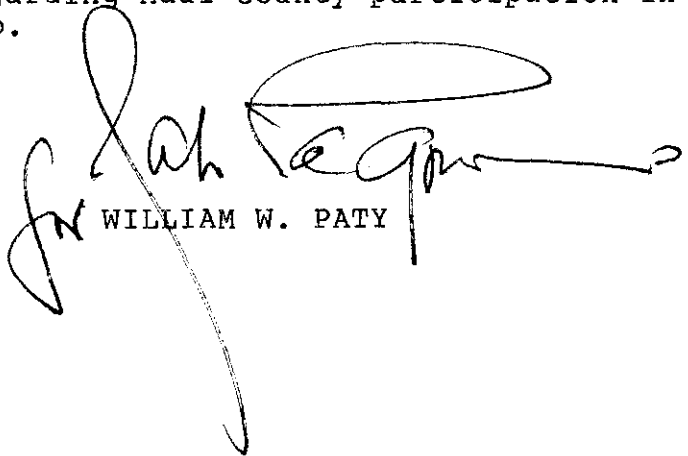
SUBJECT: Your Request for Information Regarding Proposed
Admininstrative Rules for Act 301, SLH 1988,
"Geothermal and Cable System Development Act of 1988"

Enclosed for your information is a packet of items copied from the file on the public hearing June 21, 1989, on the subject proposed rules.

The packet contains the following items:

1. copy of Act 301
2. notice of rescheduled public hearing
3. proposed rules for 6/21/89 hearing
4. revised proposed rules (dated 7/13/89)
5. summary minutes of Hilo, Hawaii public hearing 6/21/89
6. written testimony from members of the public presented at the Hilo, Hawaii public hearing 6/21/89
7. written testimony from members of the public received after 6/21/89 but before 7/7/89 deadline
8. written testimony from Hawaii County officials
9. sign in sheets, Hilo, Hawaii public hearing 6/21/89

10. transcripts of proceedings, Hilo, Hawaii public hearing 6/21/89
11. summary minutes of Wailuku, Maui public hearing 6/21/89
12. written testimony from members of the public presented at the Wailuku, Maui public hearing 6/21/89
13. written testimony from County of Maui officials presented at the Wailuku, Maui public hearing 6/21/89
14. sign in sheets, Wailuku, Maui public hearing 6/21/89
15. transcripts of proceedings, Wailuku, Maui public hearing 6/21/89
16. summary minutes, Honolulu public hearing 6/21/89
17. testimony by members of the public, Honolulu public hearing 6/21/89
18. written testimony from members of the public received after 6/21/89 but before 7/7/89 deadline
19. sign in sheets, Honolulu public hearing 6/21/89
20. comments received from City and County of Honolulu officials
21. summary minutes, Lihue, Kauai public hearing 6/21/89
22. State of Hawaii Department of Transportation letter
23. State of Hawaii Land Use Commission letter
24. legal opinion regarding Maui County participation in interagency group.


WILLIAM W. PATY

Enclosures

A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

GEOTHERMAL AND CABLE SYSTEM

DEVELOPMENT PERMITTING ACT OF 1988

§ -1 Short title. This chapter shall be known and may be cited as the "Geothermal and Cable System Development Permitting Act of 1988."

§ -2 Findings and declaration of purpose. The legislature hereby finds and declares that:

- (1) The development of Hawaii's geothermal resources, which are located principally on the island of Hawaii and possibly on the island of Maui, represents a substantial and long-term source of indigenous renewable alternate energy that could be used to

1 generate electric energy to meet the State's electric
2 energy needs and concurrently help to reduce the
3 State's need for imported fossil fuels;

4 (2) The State has deemed it appropriate that the private
5 sector should develop these geothermal resources, and,
6 to that end, has sought to encourage private sector
7 exploration and development of geothermal resources;

8 (3) The private sector companies seeking to develop
9 geothermal resources are, however, unable or unwilling
10 to expend the substantial amounts of funds needed to
11 develop these resources to their full extent without an
12 assured and sufficiently large market for the electric
13 energy to be generated therefrom, and the present and
14 projected electric energy demand on the island of
15 Hawaii does not provide an assured and sufficiently
16 large market;

17 (4) The greatest present and projected demand for
18 geothermally generated electric energy is located on
19 the island of Oahu;

20 (5) The State, with the support and assistance of the
21 federal and county of Hawaii governments, has been
22 exploring for several years the technical, engineering,
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1 economic, and financial feasibility of an interisland
2 deep water electrical transmission cable system that
3 would be capable of transmitting geothermally generated
4 electric energy from the island of Hawaii to the
5 islands of Maui and Oahu, and believes that a cable
6 system may be feasible and desirable;

7 (6) The development of such a cable system will not be
8 undertaken without the firm assurance that a sufficient
9 amount of geothermally generated electric energy will
10 be continuously available to be transmitted through a
11 cable system once it becomes operational;

12 (7) The fundamental interrelationship between the
13 development of geothermal resources and a cable system
14 and the magnitude of the cost to undertake each of
15 these developments clearly indicate that neither will
16 be undertaken without the firm assurance that the other
17 also will be undertaken in a synchronized and
18 coordinated manner to enable both developments in
19 substance to be completed concurrently, thereby
20 ensuring that revenues will be available to begin
21 amortizing the costs of each of these developments;

22 (8) A major and fundamental difficulty in the development
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1 of both geothermal resources and a cable system is the
2 diverse array of federal, state, and county land use,
3 planning, environmental, and other related laws and
4 regulations that currently control the undertaking of
5 all commercial projects in the State;

6 (9) These controls attempt to ensure that commercial
7 development projects in general are undertaken in a
8 manner consistent with land use, planning,
9 environmental, and other public policies, except that
10 some of these specific laws, regulations, and controls
11 may be repetitive, duplicative, and uncoordinated;

12 (10) To a limited extent, the State and counties have sought
13 to ameliorate this difficulty through the enactment or
14 adoption of measures to improve the coordination and
15 efficiency of land use and planning controls and
16 specifically to facilitate the development of
17 geothermal resources;

18 (11) Notwithstanding these efforts, the complexities, the
19 magnitude in scope and cost, the fundamental
20 interrelationship between the development of geothermal
21 resources and a cable system, the inherent requirement
22 for the coordinated development of the geothermal
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resources and a cable system, the substantial length of time required to undertake and complete both developments, and the desirability of private funding for both developments require that affected state and county agencies be directed to pursue and develop to the maximum extent under existing law the coordination and consolidation of regulations and controls pertinent to the development of geothermal resources and a cable system;

(12) The development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State;

(13) Because of the complexities of both projects, there is a need to develop a consolidated permit application and review process to provide for and facilitate the firm assurances that companies will require before committing the substantial amounts of funds, time, and effort necessary to undertake these developments, while at the same time ensuring the fulfillment of fundamental state and county land use and planning policies;

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(14) The development of geothermal resources and a cable system are in furtherance of the State's policies, as expressed in the state plan and elsewhere, to develop the State's indigenous renewable alternate energy resources and to decrease the State's dependency on imported fossil fuels; and

(15) A consolidated permit application and review process for the development of the State's geothermal resources and the cable system should be established by an act of the legislature.

§ -3 Definitions. As used in this chapter unless the context clearly requires otherwise:

"Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of the project.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit of the proposed project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of the project.

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1 "Department" means the department of land and natural
2 resources or any successor agency.

3 "Discretionary consent" means a consent, sanction, or
4 recommendation from an agency for which judgment and free will
5 may be exercised by the issuing agency, as distinguished from a
6 ministerial consent.

7 "Environmental impact statement" means, as applicable, an
8 informational document prepared in compliance with chapter 343 or
9 with the National Environmental Policy Act of 1969 (Public Law
10 91-190).

11 "Interagency group" means the body established pursuant to
12 section -6.

13 "Permit" means any license, permit, certificate,
14 certification, approval, compliance schedule, or other similar
15 document or decision pertaining to any regulatory or management
16 program which is related to the protection, conservation, use of,
17 or interference with the natural resources of land, air, or water
18 in the State and which is required prior to or in connection with
19 the undertaking of the project.

20 "Person" includes any individual, partnership, firm,
21 association, trust, estate, corporation, joint venture,
22 consortium, any public corporation or authority that may be
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1 established by the legislature for the purposes of the project,
2 or other legal entity other than an agency.

3 "Project" means the commercial development, construction,
4 installation, financing, operation, maintenance, repair, and
5 replacement, including without limitation all applicable
6 exploratory, testing, and predevelopment activities related to
7 the foregoing, of:

8 (1) A geothermal power plant or plants, including all
9 associated equipment, facilities, wells, and
10 transmission lines, on the island of Hawaii for the
11 purpose of generating electric energy for transmission
12 primarily to the island of Oahu through the cable
13 system; and

14 (2) An interisland deep water electrical transmission cable
15 system, including all land-based transmission lines and
16 other ancillary facilities, to transmit geothermally
17 generated electric energy from the island of Hawaii to
18 the island of Oahu, regardless of whether the cable
19 system is used to deliver electric energy to any
20 intervening point.

21 § -4 Consolidated permit application and review process.

22 (a) The department is designated as the lead agency for the
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1 purposes of this chapter and, in addition to its existing
2 functions, shall establish and administer the consolidated permit
3 application and review process provided for in this chapter,
4 which shall incorporate the permitting functions of those
5 agencies involved in the development of the project which are
6 transferred by section -10 to the department to effectuate the
7 purposes of this chapter.

8 (b) The consolidated permit application and review process
9 shall incorporate:

- 10 (1) A list of all permits required for the project;
- 11 (2) The role and functions of the department as the lead
12 agency and the interagency group;
- 13 (3) All permit review and approval deadlines;
- 14 (4) A schedule for meetings and actions of the interagency
15 group;
- 16 (5) A mechanism to resolve any conflicts that may arise
17 between or among the department and any other agencies,
18 including any federal agencies, as a result of
19 conflicting permit, approval, or other requirements,
20 procedures, or agency perspectives;
- 21 (6) Any other administrative procedures related to the
22 foregoing; and
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1 (7) A consolidated permit application form to be used for
2 the project for all permitting purposes.

3 (c) The department shall perform all of the permitting
4 functions for which it is currently responsible and which are
5 transferred to it by section -10 for the purposes of the
6 project, and shall coordinate and consolidate all required permit
7 reviews by other agencies, and to the fullest extent possible by
8 all federal agencies, having jurisdiction over any aspect of the
9 project.

10 § -5 Consolidated permit application and review
11 procedure. (a) The department shall serve as the lead agency
12 for the consolidated permit application and review process
13 established pursuant to section -4(b) and as set forth in this
14 section for the project. All agencies whose permitting functions
15 are not transferred by section -10 to the department for the
16 purposes of the project are required to participate in the
17 consolidated permit application and review process.

18 (b) To the greatest extent possible, the department and
19 each agency whose permitting functions are not transferred by
20 section -10 to the department for the purposes of the project
21 shall complete all of their respective permitting functions for
22 the purposes of the project, in accordance with the timetable for
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1 regulatory review set forth in the joint agreement described in
2 subsection (c)(3) and within the time limits contained in the
3 applicable permit statutes, ordinances, regulations, or rules;
4 except that the department or any agency shall have good cause to
5 extend, if and as permitted, the applicable time limit if the
6 permit-issuing agency must rely on another agency, including any
7 federal agency, for all or part of the permit processing and the
8 delay is caused by the other agency.

9 (c) The procedure shall be as follows:

10 (1) The applicant shall submit the consolidated permit
11 application using the consolidated permit application
12 form, which shall include whatever data about the
13 proposed project that the department deems necessary to
14 fulfill the purposes of this chapter and to determine
15 which other agencies may have jurisdiction over any
16 aspect of the proposed project.

17 (2) Upon receipt of the consolidated permit application,
18 the department shall notify all agencies whose
19 permitting functions are not transferred by section
20 -10 to the department for the purposes of the
21 project, as well as all federal agencies, that the
22 department determines may have jurisdiction over any
23 aspect of the proposed project as set forth in the
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1 application, and shall invite the federal agencies so
2 notified to participate in the consolidated permit
3 application process. The agencies, and those federal
4 agencies that accept the invitation, thereafter shall
5 participate in the consolidated permit application and
6 review process.

7 (3) The representatives of the department and the state,
8 county, and federal agencies and the applicant shall
9 develop and sign a joint agreement among themselves
10 which shall:

- 11 (A) Identify the members of the consolidated permit
12 application and review team;
13 (B) Identify all permits required for the project;
14 (C) Specify the regulatory and review responsibilities
15 of the department and each state, county, and
16 federal agency and set forth the responsibilities
17 of the applicant;
18 (D) Establish a timetable for regulatory review, the
19 conduct of necessary hearings, the preparation of
20 an environmental impact statement if necessary,
21 and other actions required to minimize duplication
22 and to coordinate and consolidate the activities
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of the applicant, the department, and the state,
county, and federal agencies; and

(E) Provide that a hearing required for a permit shall
be held on the island where the proposed activity
shall occur.

(4) A consolidated permit application and review team shall
be established and shall consist of the members of the
interagency group established pursuant to section

-6(a). The applicant shall designate its
representative to be available to the review team, as
it may require, for purposes of processing the
applicant's consolidated permit application.

(5) The department and each agency whose permitting
functions are not transferred by section -10 to the
department for the purposes of the project, and each
federal agency shall issue its own permit or approval
based upon its own jurisdiction. The consolidated
permit application and review process shall not affect
or invalidate the jurisdiction or authority of any
agency under existing law, except to the extent that
the permitting functions of any agency are transferred
by section -10 to the department for the purposes of

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the project.

- (6) The applicant shall apply directly to each federal agency that does not participate in the consolidated permit application and review process.
- (7) The department shall review for completeness and thereafter shall process the consolidated permit application submitted by an applicant for the project, and shall monitor the processing of permit application by those agencies whose permitting functions are not transferred by section -10 to the department for the purposes of the project. The department shall coordinate, and seek to consolidate where possible, the permitting functions and shall monitor and assist in the permitting functions conducted by all of these agencies, and to the fullest extent possible the federal agencies, in accordance with the consolidated permit application and review process.
- (8) Once the processing of the consolidated permit application has been completed and the permits requested have been issued to the applicant, the department shall monitor the applicant's work undertaken pursuant to the permits to ensure the

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1 applicant's compliance with the terms and conditions of
2 the permits.

3 (d) Where the contested case provisions under chapter 91
4 apply to any one or more of the permits to be issued by the
5 agency for the purposes of the project, the agency may, if there
6 is a contested case involving any of the permits, be required to
7 conduct only one contested case hearing on the permit or permits
8 within its jurisdiction. Any appeal from a decision made by the
9 agency pursuant to a public hearing or hearings required in
10 connection with a permit shall be made directly on the record to
11 the supreme court for final decision subject to chapter 602.

12 § -6 Interagency group. (a) The department shall
13 establish an interagency group comprised of those agencies whose
14 permitting functions are not transferred by section -10 to the
15 department for the purposes of the project and which have
16 jurisdiction over any aspect of the project. Each of these
17 agencies shall designate an appropriate representative to serve
18 on the interagency group as part of the representative's official
19 responsibilities. The interagency group shall perform liaison
20 and assisting functions as required by this chapter and the
21 department. The department shall invite and encourage the
22 appropriate federal agencies having jurisdiction over any aspect
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of the project to participate in the interagency group.

(b) The department and agencies shall cooperate with the federal agencies to the fullest extent possible to minimize duplication between and, where possible, promote consolidation of federal and state requirements. To the fullest extent possible, this cooperation shall include, among other things, joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with state law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling their requirements so that all documents shall comply with all applicable laws.

(c) If the legislature establishes any public corporation or authority for the purposes of the project, then upon its establishment, the public corporation or authority shall be a member of the interagency group.

§ -7 Streamlining activities. In administering the consolidated permit application and review process, the department shall:

(1) Monitor all permit applications submitted under this chapter and the processing thereof on an ongoing basis

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1 to determine the source of any inefficiencies, delays,
2 and duplications encountered and the status of all
3 permits in process;

- 4 (2) Adopt and implement needed streamlining measures
5 identified by the interagency group, in consultation
6 with those agencies whose permitting functions are not
7 transferred by section -10 to the department for the
8 purposes of the project and with members of the public;

- 9 (3) Design, in addition to the consolidated permit
10 application form, other applications, checklists, and
11 forms essential to the implementation of the
12 consolidated permit application and review process;

- 13 (4) Recommend to the legislature, as appropriate, suggested
14 changes to existing laws to eliminate any duplicative
15 or redundant permit requirements;

- 16 (5) Coordinate with agencies to ensure that all standards
17 used in any agency decision-making for any required
18 permits are clear, explicit, and precise; and

- 19 (6) Incorporate, where possible, rebuttable presumptions
20 based upon requirements met for permits issued
21 previously under the consolidated permit application
22 and review process.

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§ -8 Information services. The department shall:

- (1) Operate a permit information and coordination center during normal working hours, which will provide guidance to potential applicants for the project with regard to the permits and procedures that may apply to the project; and
- (2) Maintain and update a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred by section -10 to the department for the purposes of the project and which have control or regulatory power over any aspect of the project and of federal agencies having jurisdiction over any aspect of the project.

§ -9 Construction of the Act; rules. This chapter shall be construed liberally to effectuate its purposes, and the department shall have all powers which may be necessary to carry out the purposes of this chapter, including the authority to make, amend, and repeal rules to implement this chapter; provided that all procedures for public information and review under chapter 91 shall be preserved; and provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency

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1 under existing law. The adoption, amendment, and repeal of all
2 rules shall be subject to chapter 91.

3 § -10 Transfer of functions. (a) Those functions
4 identified in paragraphs (1) and (2) insofar as they relate to
5 the permit application, review, processing, issuance, and
6 monitoring of laws, and rules and to the enforcement of terms,
7 conditions, and stipulations of permits and other authorizations
8 issued by agencies with respect to the development, construction,
9 installation, operation, maintenance, repair, and replacement of
10 the project, or any portion or portions thereof, are transferred
11 to the department. With respect to each of the statutory
12 authorities cited in paragraphs (1) and (2), the transferred
13 functions include all enforcement functions of the agencies or
14 their officials under the statute cited as may be related to the
15 enforcement of the terms, conditions, and stipulations of
16 permits, including but not limited to the specific sections of
17 the statute cited. "Enforcement", for purposes of this transfer
18 of functions, includes monitoring and any other compliance or
19 oversight activities reasonably related to the enforcement
20 process. These transferred functions include:

- 21 (1) Such functions of the land use commission related to:
22 district boundary amendments as set forth in section
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1 205-3.1 et seq.; and changes in zoning as set forth in
2 section 205-5; and

3 (2) The permit approval and enforcement functions of the
4 director of transportation or other appropriate
5 official or entity in the department of transportation
6 related to permits or approvals issued for the use of
7 or commercial activities in or affecting the ocean
8 waters and shores of the state under chapter 266.

9 (b) Nothing in this section shall be construed to relieve
10 an applicant from the laws, ordinances, and rules of any agency
11 whose functions are not transferred by this section to the
12 department for the purposes of the project.

13 (c) This section shall not apply to any permit issued by
14 the public utilities commission under chapter 269.

15 (d) Notwithstanding any other provision of this chapter,
16 this section shall take effect on a date that is one year after
17 the effective date of this chapter.

18 § -11 Annual report. The department shall submit an
19 annual report to the governor and the legislature on its work
20 during the preceding year, the development status of the project,
21 any problems encountered, and any legislative actions that may be
22 needed further to improve the consolidated permit application and
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1 review process and implement the intent of this chapter.

2 § -12 Severability. If any provision of this chapter or
3 the application thereof to any person or circumstances is held
4 invalid, the invalidity shall not affect other provisions or
5 applications of this chapter that can be given effect without the
6 invalid provision or application, and to this end the provisions
7 of this chapter are declared severable.

8 § -13 Exemptions from certain state laws. In order to
9 promote the purposes of this chapter, all persons hired by the
10 department to effectuate this chapter are excepted from chapters
11 76, 77, and 89.

12 § -14 Development of geothermal resources on Maui. To
13 the extent an applicant's proposed project includes the
14 development of geothermal resources on the island of Maui and the
15 delivery of electric energy generated from these resources to the
16 island of Oahu through the cable system, this chapter shall apply
17 to that proposed project."

18 SECTION 2. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$275,000, or so much
20 thereof as may be necessary for fiscal year 1988-1989, to carry
21 out the purposes of this chapter. The sum appropriated shall be
22 expended by the department of land and natural resources for the
23 purposes of this Act.

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SECTION 3. This chapter shall take effect on July 1, 1988, but shall not apply to any applications filed prior to the effective date.

Approved by the
Governor on

JUN 13 1988

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NOTICE OF RESCHEDULED PUBLIC HEAR.

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development

Proposed Administrative Rules
for Geothermal and Cable System Development Permitting

Public hearings will be held by the Division of Water and Land Development, Department of Land and Natural Resources, to receive testimony on the proposed administrative rules to implement Act 301, Session Laws of Hawaii, 1988, "Geothermal and Cable System Development Permitting Act of 1988".

Act 301 provides for a consolidated permitting process for geothermal and cable system development projects, in which the Department of Land and Natural Resources shall be the lead agency. It provides coordination among agencies in order to streamline the often duplicative permitting requirements of the various agencies and it provides for developing a consolidated application form. It provides for an Interagency Group of all permitting agencies affected by such a project, and it provides for a consolidated review team to coordinate requirements such as environmental impact statements and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process, and it assures full cooperation to federal agencies that may participate on a voluntary basis.

The Act provides for a joint agreement among the agencies to participate in the process for each project. The joint agreement will provide details of timetables and schedules for coordinating and consolidating whatever requirements can be processed jointly; the joint agreement also provides a process for resolving conflicts. The Act also provides for an information center and a repository of documents for prospective project applicants.

The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided, and provisions for monitoring the permitting process are provided.

The public hearings are being rescheduled from the May 30, 1989 date previously announced to June 21, 1989 at 7:00 p.m. at the following places:

Department of Land and Natural Resources
Board Room, Room 132, Kalanimoku Building
1151 Punchbowl Street, Honolulu, HI 96813

Maui Community College
Community Services Building
310 Kaahumanu Avenue, Kahului, HI 96732

State Conference Room
State Office Building, 2nd Floor
Lihue, Kauai 96766

University of Hawaii Hilo Campus
Campus Center, Rooms 306-307
Kawili Street, Hilo, Hawaii 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person who requests a copy. Requests may be made to the Division of Water and Land Development, Department of Land and Natural Resources, Room 227, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813 (phone #548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, Hawaii 96813 (phone #548-7443).

Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building,
75 Aupuni Street, Hilo, Hawaii 96720

State Office Building
54 High Street, Wailuku, Maui 96793

State Office Building
3060 Eiwa Street, Lihue, Kauai 96766

Kaunakakai Library
395 Kaunakakai Street, Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing.

The Department of Land and Natural Resources will continue to accept written testimony until June 15, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96809.

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES



WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

Publish in:

Honolulu Star-Bulletin, issue of May 22, 29, and June 14, 1989
West Hawaii Today, issue of May 22, and June 14, 1989
Hilo Tribune Herald, issue of May 22, and June 14, 1989
Maui News, issue of May 22, and June 14, 1989
Garden Island, issue of May 22, and June 14, 1989

NOTICE OF RESCHEDULED PUBLIC HEARING

State of
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development

Proposed Administrative Rules for Geothermal and Cable System Development Permitting

Public hearings will be held by the Division of Water and Land Development, Department of Land and Natural Resources, to receive testimony on the proposed administrative rules to implement Act 301, Session Laws of Hawaii, 1988, "Geothermal and Cable System Development Permitting Act of 1988".

Act 301 provides for a consolidated permitting process for geothermal and cable system development projects, in which the Department of Land and Natural Resources shall be the lead agency. It provides coordination among agencies in order to streamline the often duplicative permitting requirements of the various agencies and it provides for developing a consolidated application form. It provides for an Interagency Group of all permitting agencies affected by such a project, and it provides for a consolidated review team to coordinate requirements such as environmental impact statements and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process, and it ensures full cooperation to federal agencies that may participate on a voluntary basis.

The Act provides for a joint agreement among the agencies to participate in this process for such project. The joint agreement will provide details to timetables and schedules for coordinating and consolidating whatever requirements can be processed jointly; the joint agreement also provides a process for resolving conflicts. The Act also provides for an information center and a repository of documents for prospective project applicants.

The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided; and provisions for monitoring the permitting process are provided.

The public hearings are being rescheduled from the May 30, 1989 date previously announced to June 21, 1989 at 7:00 p.m. at the following places:

Department of Land and Natural Resources
Board Room, Room 132, Kalaninimoku Building
1151 Punchbowl Street, Honolulu, HI 96813

Mau Community College
Community Services Building
310 Kaahumanu Avenue, Kahului, HI 96732

State Conference Room
State Office Building, 2nd Floor
Lihue, Kauai 96766

University of Hawaii Hilo Campus
Campus Center, Rooms 306-307
Kawili Street, Hilo, Hawaii 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person who requests a copy. Requests may be made to the Division of Water and Land Development, Department of Land and Natural Resources, Room 227, 1151 Punchbowl Street, Kalaninimoku Building, Honolulu, Hawaii 96813 (phone No. 548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, Hawaii 96813 (phone No. 548-7443).

Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building,
75 Aupuni Street, Hilo, Hawaii 96720

State Office Building
54 High Street, Wailuku, Maui 96793

State Office Building
3060 Ewa Street, Lihue, Kauai 96766

Kaunakakai Library
395 Kaunakakai Street, Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing.

The Department of Land and Natural Resources will continue to accept written testimony until June 15, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96890.

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES
WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

(43B—Hawaii Tribune-Herald: May 22; June 14, 1989)

LEGAL NOTICE

NOTICE OF RESCHEDULED PUBLIC HEARING

State of Hawaii
DEPARTMENT OF LAND AND
NATURAL RESOURCES
Division of Water and Land
Development

Proposed Administrative Rules for Geothermal and Cable System Development Permitting

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The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; a provision for transfer of certain permitting functions from Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided; and provisions for monitoring the permitting process are provided.

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State Office Building, 2nd Floor
Lihue, Kauai 96766

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Campus Center, Room 306-307
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Copies of the proposed rules will also be available free of charge at the following locations:

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75 Aupuni Street, Hilo, Hawaii 96720

State Office Building
54 High Street, Wailuku, Maui 96793

State Office Building
3060 Ewa Street, Lihue, Kauai 96766

Kaunakakai Library
395 Kaunakakai Street,
Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing. The Department of Land and Natural Resources will continue to accept written testimony until July 7, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96890.

State of Hawaii
BOARD OF LAND AND
NATURAL RESOURCES
WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

(Hon. S.B. May 22, 29; June 14, 1989)

(SB-9944)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 185

Rules of Practice and Procedure for
Geothermal and Cable System Development Permitting

Subchapter 1. General

Section 13-185-1	Purpose
Section 13-185-2	Definitions
Section 13-185-3	Transfer of functions
Section 13-185-4	Consolidated permit application and review process
Section 13-185-5	Contested case provisions
Section 13-185-6	Streamlining
Section 13-185-7	Information services
Section 13-185-8	Annual Report

Subchapter 2. Consolidated permit application
and review process

Section 13-185-9	Application and review procedure
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Section 13-185-13	Joint agreement
Section 13-185-14	Conflict resolution process

Subchapter 3. Regulation of consolidated geothermal
and cable system development permitting

Section 13-185-15	Monitoring and enforcing applicant's compliance with terms and conditions of permits
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Subchapter 1. General

Section 13-185-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for consolidated geothermal and cable system development permitting. Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that affect geothermal and cable system development. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-2)

Section 13-185-2 Definitions. As used in this chapter: "Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit for a geothermal and cable system development project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of a geothermal and cable system development project.

"Conflict" means a procedural disagreement between or among agencies as a result of conflicting permit, approval, or other requirements, procedures, or agency perspectives, not based on statute, ordinance, or rule established pursuant thereto, but based on administrative interpretation outside of statutory authority.

"Consolidated permit application form" means a package of forms comprising the form made for this purpose by the department of land and natural resources plus the forms of whatever federal and other agencies have permitting authority over a particular project and are required to use their own application form. Information provided in this package includes but is not limited to information identifying the applicant, the landowner, the location of the proposed geothermal and cable system development project, the types of permits required, environmental requirements, information on the geographic location of the project, a description of the proposed project, and plan information.

"Department" means the department of land and natural resources or any successor agency.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgement and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental impact statement" means, as applicable, an informational document prepared in compliance with chapter 343, Hawaii Revised Statutes, or with the National Environmental Policy Act of 1969 (Public Law 91-190).

"Geothermal and cable system development project" or "project" means the commercial development, construction, installation, financing, operation, maintenance, repair, and replacement, including without limitation all applicable exploratory, testing, and predevelopment activities related to the foregoing, of:

- (1) a geothermal power plant or plants, including associated equipment, facilities, wells, and transmission lines, on the islands of Hawaii or Maui, for the purpose of generating electric energy for transmission primarily to the island of Oahu through the cable system; and
- (2) an interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the islands of Hawaii or Maui, to the islands of Oahu or Maui, regardless of whether the cable system is used to deliver electric energy to any intervening point.

"Interagency group" means a group comprised of representatives from county, State, and federal agencies involved in geothermal and cable system development permitting activities whose permitting functions are not transferred by Sec. 196D-10, Hawaii Revised Statutes, to the department for the purpose of consolidating the permitting process for geothermal and cable system development projects.

"Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State and which is required prior to or in connection with the undertaking of the project.

"Person" includes any individual, partnership, firm, association, trust, estate, corporation, joint venture, consortium, any public corporation or authority that may be established by the legislature for the purposes of the project, or other legal entity other than an agency.

[Eff:] (Auth: HRS Sec. 196D-9)

(Imp: HRS Secs. 196D-3, HRS 196D-6)

Section 13-185-3 Transfer of functions. The following functions are transferred to the department: the functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes; and functions of the land use commission related to changes in zoning as set forth in section 205-5, Hawaii Revised Statutes; and permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes.

(a) Regarding functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes, for district boundary amendments involving land areas greater than fifteen acres, and for land areas fifteen acres or less in conservation districts, as they relate to a geothermal and cable system development project, the department shall process applications as follows. The applicant shall file a petition for boundary amendment with the department. The petition shall be in writing and shall provide a statement of the authorization or relief sought; the statutory provisions under which authorization or relief is sought; for petitions to reclassify properties from the conservation district to any other district, the petition shall include an environmental impact statement or negative declaration approved by the department for the proposed reclassification request; the legal name of the petitioner, and the address, description of the property, the petitioner's proprietary interest in the property, and a copy of the deed or lease, with written authorization of the fee owner to file the petition; the petition shall include the type of development proposed and details regarding the development including timetables, cost, assessment of the effects of the development, and an assessment of the need for reclassification. The department shall serve copies of the application upon the county planning department and planning commission within which the subject land is situated, upon the director of the department of planning

and economic development, or a designated representative, and upon all persons with a property interest in the property recorded in the county's real property tax records at the time the petition is filed, along with a notice of a public hearing on the matter, to be conducted on the appropriate island. The department shall set the hearing within not less than sixty and not more than one hundred eighty days after a proper application has been filed. The department shall also mail notice of the hearing to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and notice of the hearing shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further, shall inform all interested persons of their rights regarding intervening in the proceedings. The department shall appear at the proceedings as a party in the petition and shall make recommendations relative to the proposed boundary change. The department shall admit any other department or agencies of the State and of the county in which the land is situated as parties upon timely application. The department shall admit any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public, as parties for intervention to the proposed boundary change. The department shall receive applications for leave to intervene from any member of the public. However, the department shall deny an application if it appears it is substantially the same as the position of a party already admitted to the proceeding or if admission of additional parties will render the proceedings inefficient and unmanageable. The petition for intervention shall be filed with the department within fifteen days after the notice of hearing is published in the newspaper. The petition shall make reference to the following:

- (1) Nature of petitioner's statutory or other right;
 - (2) Nature and extent of the petitioner's interest,
- and if an abutting property owner, the tax map key description of the property;

(3) Effect of any decision in the proceeding on petitioner's interest.

Within a period of not more than one hundred and twenty days after the close of the hearing, the department shall, by findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of the law or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

(b) Regarding transfer of the function of the land use commission concerning changes in zoning, the department shall review and consider issuing special permits as necessary in connection with applications for geothermal and cable system development projects on land zoned for agriculture and within rural districts. Such special permits may be issued at the department's discretion upon favorable review of the purpose of the request.

(c) Regarding permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes, for any construction, dredging, or filling within the ocean waters of the State, including ocean waters, navigable streams and harbors belonging to or controlled by the State, to be undertaken as part of a geothermal and cable systems development project, a permit application form called "Application for Work in the Ocean Waters of the State of Hawaii", available at the Division of Water and Land Development, shall be filed by the applicant. Requirements to accompany the application include an environmental assessment or statement, a description of the shoreline, nature and extent of proposed work (such as construction, dredging, disposition of dredged material, filling, or other work), reference to public access, effects on adjacent property owners, and other information pertinent to the proposed work as required. In areas where a Conservation District Use Application (CDUA) is required, the Application for Work in the Ocean Waters of the State of Hawaii need not be filed. The requirements outlined above will be met via inter-division coordination within the department. A separate application for permit for work in the shorewaters of the State will no longer be necessary except when: (1) applicant's proposal is in the conservation district, but does not require a CDUA per the department's determination and (2) applicant applies for

CDUA, but in the review process the department expresses opposition or objection to the proposal. In areas where the proposed project is in the ocean waters, but not in the conservation district, the applicant is required to file with the department. The department shall inform and consult with, as appropriate, various agencies that have jurisdiction over navigable waters. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".
 [Eff:] (Auth: HRS Sec. 196D-9)
 (Imp: HRS Sec. 196D-10)

Section 13-185-4 Consolidated permit application and review process. In order to carry out the intent of the geothermal and cable system development permitting act of 1988, the department shall establish and administer a consolidated permit application and review process as provided in this chapter. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law, except to the extent that permitting functions have been transferred to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based on its own jurisdiction. [Eff:]
 (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-5 Contested case provisions. Where the contested case provisions under chapter 91, Hawaii Revised Statutes, apply to any one or more of the permits to be issued by an agency for the purposes of the project, the agency may, if there is a contested case involving any of the permits, be required to conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the supreme court for final decision subject to chapter 602, Hawaii Revised Statutes. [Eff:]
 (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-6 Streamlining. The department shall monitor the processing of all permit applications under this chapter on an ongoing basis to identify inefficiencies, delays, and duplications of effort. The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting

Section 13-185-6

for geothermal and cable system development projects. Any alternative suggestions and recommended changes in procedures will be brought to the interagency group as appropriate for consideration and adoption. The department may develop legislative proposals as appropriate to eliminate any duplicative or redundant permit requirements. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-7)

Section 13-185-7 Information services. (a) The department shall operate a permit information and coordination center that will provide guidance to potential applicants for geothermal and cable system development projects with regard to permits and procedures that may apply to the project. The center shall be known as the geothermal and cable system development permitting information and coordination center.

(b) The department shall maintain and update at the geothermal and cable system development permitting information and coordination center a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting and which have control or regulatory power over any aspect of geothermal and cable systems development projects and of federal agencies having jurisdiction over any aspect of these projects. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-8)

Section 13-185-8 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year. The report shall include the status of geothermal and cable system development projects, any problems encountered, any legislative actions that may be needed to improve the consolidated permit application and review process, and to implement the intent of the geothermal and cable system development act of 1988. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-11)

Subchapter 2. Consolidated permit application
and review procedures

Section 13-185-9 Application and review procedure.
(a) The department shall provide the applicant with a geothermal/cable development consolidated permit application form. The consolidated permit application

form will be available during office hours 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays, at the following address:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813
Telephone: 548-7533
Telefax: 548-6052

The department shall provide necessary assistance for the applicant to fill out the consolidated geothermal/cable development application form.

(b) The department shall provide advice to any applicant when federal and other agencies have indicated that they will not participate in the consolidated permit application and review process. The department shall assist the applicant in applying directly to these agencies, and shall coordinate to the fullest extent possible the consolidated permitting process with the permitting processes of the non-participating federal and other agencies.

(c) Upon receipt of the properly completed consolidated permit application, the department shall notify all State and county agencies whose permitting functions are not transferred to the department for the purpose of geothermal/cable system development permitting, as well as all federal agencies that may have jurisdiction over any aspect of the proposed project as set forth in the application, and shall invite the federal agencies and shall require State and county agencies so notified to participate in the consolidated permit application and review process. [Eff:]

(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-10 Application filing and fees. The applicant shall attach to the consolidated permit application form a preliminary statement of project costs. A filing fee varying with the statement of project cost shall accompany the consolidated permit application as follows:

<u>Project Cost</u>	<u>Fee</u>
\$0 - 999,999	\$200
1,000,000 - 9,999,999	\$400
more than 10,000,000	\$600

Section 13-185-10

The fee shall be payable by check which shall accompany the application and should be made payable to the State of Hawaii. The check and the geothermal/cable development consolidated application shall be submitted to:

State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96806

or delivered to:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Checks for filing fees required for filing applications with agencies participating in the consolidated permit application and review process but whose permitting functions have not been transferred to the department for the project shall be made out in separate amounts to the respective agencies but shall be attached to the consolidated permit application form.

Filing fees for federal and other agencies not participating in the consolidated permit application and review process shall be submitted directly to those agencies. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-11 Interagency group. In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an interagency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department including but not limited to the following:

U.S. Army Corps of Engineers
District Engineer (POD CO-O)
Building 230
Fort Shafter, Hawaii 96858

Commander in Chief
U.S. Pacific Fleet
Pearl Harbor, Hawaii 96860

Commander, U.S. Coast Guard
Fourteenth Coast Guard District (OAN)
300 Ala Moana Boulevard, Room 9153
Honolulu, Hawaii 96850

District Chief,
Water Resources Division
U.S. Geological Survey
300 Ala Moana Boulevard, Room 6110
Honolulu, Hawaii 96850

Pacific Islands Administrator
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 5302
P.O. Box 50167
Honolulu, Hawaii 96850

National Marine Fisheries Service
Pacific Islands Coordinator
2570 Dole Street, Room 106
Honolulu, Hawaii 96822-2396

Environmental Protection Agency
Manager,
Pacific Islands Contact Office
300 Ala Moana Boulevard, Room 1302
Honolulu, Hawaii 96850

Pacific Area Director
National Park Service
300 Ala Moana Boulevard, Room 6305
Honolulu, Hawaii 96850

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

State of Hawaii
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Department of Business and
Economic Development
250 South King Street
Honolulu, Hawaii 96813

Mayor, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96721

Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96783

Mayor, City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the interagency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

If the legislature establishes any public corporation or authority for the purposes of implementing geothermal and cable systems development projects, then upon its establishment, the public corporation or authority shall be a member of the interagency group. The department shall convene meetings of the interagency group as required, and in appropriate locations, to organize to participate and to participate in the consolidated permit application and review process. The department shall convene a meeting of the interagency group in a timely manner upon completion of the department's review of each properly completed geothermal/cable consolidated permit application. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-6)

Section 13-185-12 Consolidated permit application and review team. (a) The department shall select a working team known as the consolidated permit application and review team from among representatives of agencies having jurisdiction over any aspect of the project. The applicant shall designate a representative to be available to the consolidated application and review team for

purposes of processing the applicant's consolidated permit application. The consolidated application and review team shall work with the department to provide permitting coordination for each geothermal and cable system development project. The team shall consolidate the various permitting requirements for each project.

(b) The department and agencies, through the consolidated permit application and review team, shall cooperate with the federal agencies to the fullest extent possible to minimize duplication and where possible promote consolidation of federal and State requirements. To the fullest extent possible, this cooperation shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with State law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling those requirements so that all documents shall comply with all applicable laws. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Secs. 196D-5, 196D-6)

Section 13-185-13 Joint Agreement. Representatives of the State and county agencies participating on the consolidated application and review team shall sign a joint agreement committing them to meet and perform the following tasks for each project application:

- (1) provide a listing of all permits required for the proposed project;
- (2) specify the regulatory and review responsibilities of the department and each State, county, and federal agency and the responsibilities of the applicant;
- (3) provide a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement, if necessary, and other actions required to minimize duplication and to coordinate and consolidate the activities of the applicant, the department, and the State, county, and federal agencies; the timetable shall accommodate existing statutes, ordinances, or rules established pursuant thereto, of each participating agency so that if one participating agency requires more time than another agency to process its portion of the consolidated permit application and cannot move up its schedule, the consolidated process shall defer to the agency with the longer time requirement.

- (4) coordinate hearings required for a permit, and hold hearings on the island where the proposed activity shall occur;
- (5) prepare alternatives for resolving conflicts and bring these to the affected agencies for resolution and if none of these alternatives is satisfactory to resolve a conflict, follow the conflict resolution process in section 13-185-14;
- (6) approve a consolidated permit compliance monitoring program and schedule prepared by the department to take effect after a proposed project is approved, to be monitored by the department;
- (7) provide that each agency shall monitor and enforce the respective terms and conditions of each agency's respective permits.

Federal agencies are invited to sign the joint agreement for a period not to exceed the term of the entire process for each geothermal and cable system development project application submitted to the department. Signing the joint agreement and thereby participating in the consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law. Each agency shall issue its own permit or approval based on its own jurisdiction. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-4)

Section 13-185-14 Conflict resolution process.
Should administrative or procedural conflicts arise that the consolidated permit application and review team cannot resolve, the following conflict resolution process shall be implemented:

(a) in a conflict between State departments, any affected State department head may declare that an impasse exists between that department and any department or departments of the State during any phase of the permitting process related to the geothermal and cable systems development project. The applicant may also seek an impasse declaration by filing in writing with the administrative director of the State that such a declaration should be issued if the processing of a permit application has not made significant progress for forty-five calendar days. The administrative director shall make the determination whether an impasse declaration should be made. Upon an impasse being declared, the involved department heads shall each submit a report in writing to the administrative director within ten calendar days from the date of the impasse declaration.

The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee shall meet with the involved directors within twenty calendar days from the impasse declaration date. Should the impasse still exist following this meeting, the administrative director shall report to the governor the latest position of the directors and a recommendation. Upon a decision of the governor resolving the impasse, the involved departments shall initiate implementing the governor's decision within three calendar days from the date of the final decision.

(b) in a conflict between State and county agencies, any State or county department head involved in processing an application related to the geothermal/cable project can declare that an impasse has developed between the involved county and State departments.

Such a declaration shall be in writing identifying the unresolved issues and the respective positions of the affected departments. The applicant may also seek an impasse declaration by filing a written request with the administrative director of the State or the county agency which shall be designated by the mayor. Such a request for impasse declaration may be made if the processing of a permit application has not made significant progress for forty-five calendar days. Unless objected to in writing by the reviewing county and State department or State departments, an impasse declaration shall be made within ten working days from the date that the request for impasse declaration was filed. Upon an impasse being declared, the affected State and county department heads shall each submit a report in writing to both the State administrative director and the designated county agency within ten days from the date of impasse declaration. The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-4)

Subchapter 3. Regulation of Geothermal and Cable
System Development Permitting

Section 13-185-15 Monitoring applicants' compliance with terms and conditions of permits. Once a geothermal and cable systems development consolidated permit application has been approved by the review team, the department shall commence monitoring the applicant's compliance with the terms and conditions of the permits for which the department has full and direct responsibility, including those issued pursuant to functions transferred to the department by section 196D-10, Hawaii Revised Statutes. The department shall prepare a schedule for monitoring terms and conditions of consolidated permits that shall be accepted by the consolidated permit application and review team. The department shall monitor permitting agencies' monitoring activities to assure permit compliance is being monitored. The monitoring schedule will identify terms and conditions of compliance, dates of monitoring, federal and other agencies and individuals who shall carry out the monitoring activity, and the date the report of the monitoring activity shall be sent to the department. The department shall maintain a log of the monitoring activities and shall alert the appropriate permitting agency if monitoring for permit compliance is not being carried out on schedule. If necessary the department in conjunction with the affected agency or agencies shall enforce all terms and conditions related to any permit.

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 185

Rules of Practice and Procedure for
Geothermal and Cable System Development Permitting

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Section 13-185-1

Subchapter 1. General

Section 13-185-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for consolidated geothermal and cable system development permitting. Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that affect geothermal and cable system development. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-2)

Section 13-185-2 Definitions. As used in this chapter: "Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit for a geothermal and cable system development project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of a geothermal and cable system development project.

"Conflict" means a procedural disagreement between or among agencies as a result of conflicting permit, approval, or other requirements, procedures, or agency perspectives, not based on statute, ordinance, or rule established pursuant thereto, but based on administrative interpretation outside of statutory authority.

"Consolidated permit application form" means a package of forms comprising the form made for this purpose by the department of land and natural resources plus the forms of whatever federal and other agencies have permitting authority over a particular project and are required to use their own application form. Information provided in this package includes but is not limited to information identifying the applicant, the landowner, the location of the proposed geothermal and cable system development project, the types of permits required, environmental requirements, information on the geographic location of the project, a description of the proposed project, and plan information.

"Department" means the department of land and natural resources or any successor agency.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgement and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental impact statement" means, as applicable, an informational document prepared in compliance with chapter 343, Hawaii Revised Statutes, or with the National Environmental Policy Act of 1969 (Public Law 91-190).

"Geothermal and cable system development project" or "project" means the commercial development, construction, installation, financing, operation, maintenance, repair, and replacement, including without limitation all applicable exploratory, testing, and predevelopment activities related to the foregoing, of:

- (1) a geothermal power plant or plants, including associated equipment, facilities, wells, and transmission lines, on the islands of Hawaii or Maui, for the purpose of generating electric energy for transmission primarily to the island of Oahu through the cable system; and
- (2) an interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the islands of Hawaii or Maui, to the islands of Oahu or Maui, regardless of whether the cable system is used to deliver electric energy to any intervening point.

"Interagency group" means a group comprised of representatives from county, State, and federal agencies involved in geothermal and cable system development permitting activities whose permitting functions are not transferred by Sec. 196D-10, Hawaii Revised Statutes, to the department for the purpose of consolidating the permitting process for geothermal and cable system development projects.

"Intervenor" means a person or agency who properly seeks by application to intervene and is entitled as of right to be admitted as a party in any court or agency proceeding.

"Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State and which is required prior to or in connection with the undertaking of the project.

Section 13-185-2

"Person" includes any individual, partnership, firm, association, trust, estate, corporation, joint venture, consortium, any public corporation or authority that may be established by the legislature for the purposes of the project, or other legal entity other than an agency.

[Eff:] (Auth: HRS Sec. 196D-9)

(Imp: HRS Secs. 196D-3, HRS 196D-6)

Section 13-185-3 Transfer of functions. For purposes of geothermal and cable system development projects and for those projects only, the following functions are transferred to the department: the functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes; and functions of the land use commission related to changes in zoning as set forth in section 205-5, Hawaii Revised Statutes; and permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes. If a geothermal and cable system development project is not successful or is terminated as determined by the department, any change in boundary or zoning made pursuant to Section 13-185-3 shall revert to the boundary or zoning in place before the change.

(a) Regarding functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes, for district boundary amendments involving land areas greater than fifteen acres, and for land areas fifteen acres or less in conservation districts, for purposes of geothermal and cable system development projects and for those projects only, the department shall process applications as follows. The applicant shall file a petition for boundary amendment with the department. The petition shall be in writing and shall provide a statement of the authorization or relief sought and the statutory provisions under which authorization or relief is sought. For petitions to reclassify properties from the conservation district to any other district, the petition shall include an environmental impact statement or negative declaration approved by the department for the proposed reclassification request; the legal name of the petitioner, and the address, description of the property, the petitioner's proprietary interest in the property, and a copy of the deed or lease, with written authorization of the fee owner to file the petition. The petition shall include the type of development proposed and details

regarding the development including timetables, cost, assessment of the effects of the development, and an assessment of the need for reclassification. The department shall serve copies of the application upon the county planning department and planning commission within which the subject land is situated, upon the director of the department of business and economic development, or a designated representative, and upon all persons with a property interest in the property, and upon all persons with a property interest lying within 1000' of the subject property, recorded in the county's real property tax records at the time the petition is filed, along with a notice of a public hearing on the matter, to be conducted on the appropriate island. The department shall set the hearing within not less than sixty and not more than one hundred eighty days after a proper application has been filed. The department shall also mail notice of the hearing to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and notice of the hearing shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of chapter 91, Hawaii Revised Statutes, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further, shall inform all interested persons of their rights regarding intervening in the proceedings. The petitioner, the office of state planning and the county planning department within which the subject land is situated shall appear at the proceedings as parties in the petition and shall make recommendations relative to the proposed boundary change. The department shall admit any other department or agencies of the State and of the county in which the land is situated as parties upon timely application. The department shall admit any person who has some property interest in the land, who lawfully resides on the land, or within 1000' of the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public, as intervenors to the proposed boundary change. The department shall receive applications for leave to intervene from any member of the public, which shall be freely granted, provided the department may deny an

application if it appears it is substantially the same as the position of a party already admitted to the proceeding or if admission of additional parties will render the proceedings inefficient and unmanageable. The petition for intervention shall be filed with the department within fifteen days after the notice of hearing is published in the newspaper. The petition shall make reference to the following:

- (1) Nature of petitioner's statutory or other right;
- (2) Nature and extent of the petitioner's interest, and if an abutting property owner, or a property owner whose property lies within 1000' of the subject land, the tax map key description of the property;
- (3) Effect of any decision in the proceeding on petitioner's interest.

Within a period of not more than one hundred and twenty days after the close of the hearing, the department shall, by findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of the law or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

The department shall not approve an amendment of a land use district boundary unless the department finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of section 205-2, Hawaii Revised Statutes, and consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205A-2, Hawaii Revised Statutes.

In its review of any petition for reclassification of district boundaries pursuant to this chapter, the department shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii State Plan and relates to the applicable priority guidelines of the Hawaii State Plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;

- (3) The impact of the proposed reclassification on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical, or natural resources;
 - (C) Maintenance of other natural resources relevant to Hawaii's economy including, but not limited to agricultural resources;
 - (D) Commitment of state funds and resources;
 - (E) Provision for employment opportunities and economic development; and
 - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate and gap groups; and
- (4) In establishing the boundaries of the districts in each county, the department shall give consideration to the general plan of the county in which the land is located.

Amendments of land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.

(b) Regarding transfer of the function of the land use commission concerning changes in zoning, for purposes of geothermal and cable system development projects and for those projects only, for land within agricultural and rural districts the area of which is greater than fifteen acres, special permits of the county planning commission for geothermal and cable development projects shall be subject to approval by the department for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.. The department may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, Hawaii Revised Statutes;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;

- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests for a geothermal and cable system development project involving a land area greater than fifteen acres shall be transmitted to the department within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the department shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the department or a modification by the department as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(c) Regarding permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes, for any construction, dredging, or filling within the ocean waters of the State, including ocean waters, navigable streams and harbors belonging to or controlled by the State, to be undertaken as part of a geothermal and cable systems development project, a permit application form called "Application for Work in the Ocean Waters of the State of Hawaii", available at the Division of Water and Land Development, shall be filed by the applicant. Requirements to accompany the application include an environmental assessment or statement, a description of the shoreline, nature and extent of proposed work (such as construction, dredging, disposition of dredged material, filling, or other work), reference to public access, effects on adjacent property owners, and other information pertinent to the proposed work as required. In areas where a Conservation District Use Application (CDUA) is required, the Application for Work in the Ocean Waters of the State of Hawaii need not be filed. The requirements outlined above will be met via inter-division coordination within the department. A separate application for permit for work in the shorewaters of the State will no longer be necessary

except when: (1) an applicant's proposal is in the conservation district, but does not require a CDUA per the department's determination and (2) an applicant applies for a CDUA, but in the review process the department expresses opposition or objection to the proposal. In areas where the proposed project is in the ocean waters, but not in the conservation district, the applicant is required to file an application for work with the department. The department shall inform and consult with, as appropriate, various agencies that have jurisdiction over navigable waters. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-10)

Section 13-185-4 Consolidated permit application and review process. In order to carry out the intent of the geothermal and cable system development permitting act of 1988, the department shall establish and administer a consolidated permit application and review process as provided in this chapter. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law, except to the extent that permitting functions have been transferred by the Act to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based on its own jurisdiction. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-5 Contested case provisions. Where the contested case provisions under chapter 91, Hawaii Revised Statutes, apply to any one or more of the permits to be issued by an agency for the purposes of the project, the agency may, if there is a contested case involving any of the permits, conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the supreme court for final decision subject to chapter 602, Hawaii Revised Statutes. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-6

Section 13-185-6 Streamlining. The department shall monitor the processing of all permit applications under this chapter on an ongoing basis to identify inefficiencies, delays, and duplications of effort. Any alternative suggestions and recommended changes in procedures will be brought to the interagency group as appropriate for consideration and adoption, in consultation with those agencies whose permitting functions are not transferred to the department for purposes of the project and with members of the public. The department may develop legislative proposals as appropriate to eliminate any duplicative or redundant permit requirements. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-7)

Section 13-185-7 Information services. (a) The department shall operate a permit information and coordination center that will provide guidance to potential applicants for geothermal and cable system development projects with regard to permits and procedures that may apply to the project. The center shall be known as the geothermal and cable system development permitting information and coordination center.

(b) The department shall maintain and update at the geothermal and cable system development permitting information and coordination center a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting and which have control or regulatory power over any aspect of geothermal and cable systems development projects and of federal agencies having jurisdiction over any aspect of these projects. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-8)

Section 13-185-8 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year. The report shall include the status of geothermal and cable system development projects, any problems encountered, any legislative actions that may be needed to improve the consolidated permit application and review process, and to implement the intent of the geothermal and cable system development act of 1988.
[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-11)

Subchapter 2. Consolidated permit application
and review procedures

Section 13-185-9 Application and review procedure.

(a) The department shall provide the applicant with a geothermal/cable development consolidated permit application form. The consolidated permit application form will be available during office hours 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays, at the following address:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813
Telephone: 548-7533
Telefax: 548-6052

The department shall provide necessary assistance for the applicant to fill out the consolidated geothermal/cable development application form.

(b) The department shall provide advice to any applicant when federal and other agencies have indicated that they will not participate in the consolidated permit application and review process. The department shall assist the applicant in applying directly to these agencies, and shall coordinate to the fullest extent possible the consolidated permitting process with the permitting processes of the non-participating federal and other agencies.

(c) Upon receipt of the properly completed consolidated permit application, the department shall notify all State and county agencies whose permitting functions are not transferred to the department for the purpose of geothermal/cable system development permitting, as well as all federal agencies that may have jurisdiction over any aspect of the proposed project as set forth in the application, and shall invite the federal agencies and shall require State and county agencies so notified to participate in the consolidated permit application and review process. [Eff:]

(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-10

Section 13-185-10 Application filing and fees. The applicant shall attach to the consolidated permit application form a preliminary statement of project costs. A filing fee varying with the statement of project cost shall accompany the consolidated permit application as follows:

<u>Project Cost</u>	<u>Fee</u>
\$0 - 999,999	\$200
1,000,000 - 9,999,999	\$400
more than 10,000,000	\$600

The fee shall be payable by check which shall accompany the application and should be made payable to the State of Hawaii. The check and the geothermal/cable development consolidated application shall be submitted to:

State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96806

or delivered to:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Checks for filing fees required for filing applications with agencies participating in the consolidated permit application and review process but whose permitting functions have not been transferred to the department for the project shall be made out in separate amounts to the respective agencies but shall be attached to the consolidated permit application form.

Filing fees for federal and other agencies not participating in the consolidated permit application and review process shall be submitted directly to those agencies. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-11 Interagency group. In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an interagency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department including but not limited to the following:

U.S. Army Corps of Engineers
District Engineer (POD CO-O)
Building 230
Fort Shafter, Hawaii 96858

Commander in Chief
U.S. Pacific Fleet
Pearl Harbor, Hawaii 96860

Commander, U.S. Coast Guard
Fourteenth Coast Guard District (OAN)
300 Ala Moana Boulevard, Room 9153
Honolulu, Hawaii 96850

District Chief,
Water Resources Division
U.S. Geological Survey
300 Ala Moana Boulevard, Room 6110
Honolulu, Hawaii 96850

Pacific Islands Administrator
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 5302
P.O. Box 50167
Honolulu, Hawaii 96850

National Marine Fisheries Service
Pacific Islands Coordinator
2570 Dole Street, Room 106
Honolulu, Hawaii 96822-2396

Environmental Protection Agency
Manager,
Pacific Islands Contact Office
300 Ala Moana Boulevard, Room 1302
Honolulu, Hawaii 96850

Section 13-185-11

Pacific Area Director
National Park Service
300 Ala Moana Boulevard, Room 6305
Honolulu, Hawaii 96850

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

State of Hawaii
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Department of Business and
Economic Development
250 South King Street
Honolulu, Hawaii 96813

Mayor, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96721

Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96783

Mayor, City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the interagency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

If the legislature establishes any public corporation or authority for the purposes of implementing geothermal and cable systems development projects, then upon its establishment, the public corporation or authority shall be a member of the interagency group. The department shall convene meetings of the interagency group as required, and in appropriate locations, to organize to participate and to participate in the consolidated permit application and review process. The department shall convene a meeting of the interagency group in a timely manner upon completion of the department's review of each properly completed geothermal/cable consolidated permit application. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-6)

Section 13-185-12 Consolidated permit application and review team. (a) The department shall select a working team known as the consolidated permit application and review team from members of the interagency group. The applicant shall designate a representative to be available to the consolidated application and review team for purposes of processing the applicant's consolidated permit application. The consolidated application and review team shall work with the department to provide permitting coordination for each geothermal and cable system development project. The team shall consolidate the various permitting requirements for each project.

(b) The department and agencies, through the consolidated permit application and review team, shall cooperate with the federal agencies to the fullest extent possible to minimize duplication and where possible promote consolidation of federal and State requirements. To the fullest extent possible, this cooperation shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with State law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling those requirements so that all documents shall comply with all applicable laws. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Secs. 196D-5, 196D-6)

Section 13-185-13 Joint agreement. Representatives of the State and county agencies participating on the consolidated application and review team shall sign a joint agreement committing them to meet and perform the following tasks for each project application:

Section 13-185-13

- (1) provide a listing of all permits required for the proposed project;
- (2) specify the regulatory and review responsibilities of the department and each State, county, and federal agency and the responsibilities of the applicant;
- (3) provide a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement, if necessary, and other actions required to minimize duplication and to coordinate and consolidate the activities of the applicant, the department, and the State, county, and federal agencies; the timetable shall accommodate existing statutes, ordinances, or rules established pursuant thereto, of each participating agency so that if one participating agency requires more time than another agency to process its portion of the consolidated permit application and cannot move up its schedule, the consolidated process shall defer to the agency with the longer time requirement.
- (4) coordinate hearings required for a permit, and hold hearings on the island where the proposed activity shall occur;
- (5) prepare alternatives for resolving administrative or procedural conflicts and bring these to the affected agencies for resolution and if none of these alternatives is satisfactory to resolve a conflict, follow the conflict resolution process in section 13-185-14;
- (6) approve a consolidated permit compliance monitoring program and schedule prepared by the department to take effect after a proposed project is approved, to be monitored by the department;
- (7) provide that each agency shall monitor and enforce the respective terms and conditions of each agency's respective permits.

Federal agencies are invited to sign the joint agreement for a period not to exceed the term of the entire process for each geothermal and cable system development project application submitted to the department. Signing

the joint agreement and thereby participating in the consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law. Each agency shall issue its own permit or approval based on its own jurisdiction.

[Eff:] (Auth: HRS Sec. 196D-9)

(Imp: HRS Sec. 196D-4)

Section 13-185-14 Conflict resolution process.

Should administrative or procedural conflicts, as opposed to conflicts of authority, which are not treated in this chapter, arise that the consolidated permit application and review team cannot resolve, the following conflict resolution process shall be implemented:

(a) In an administrative or procedural conflict, as opposed to a conflict of authority, which is not treated in this chapter, conflict between State departments, any affected State department head may declare that an impasse exists between that department and any department or departments of the State during any phase of the permitting process related to the geothermal and cable systems development project. The applicant may also seek an impasse declaration by filing in writing with the administrative director of the State that such a declaration should be issued if the processing of a permit application has not made significant progress for forty-five calendar days. The administrative director shall make the determination whether an impasse declaration should be made. Upon an impasse being declared, the involved department heads shall each submit a report in writing to the administrative director within ten calendar days from the date of the impasse declaration. The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee shall meet with the involved directors within twenty calendar days from the impasse declaration date. Should the impasse still exist following this meeting, the administrative director shall report to the governor the latest position of the directors and a recommendation. Upon a decision of the governor resolving the impasse, the involved departments shall initiate implementing the governor's decision within three calendar days from the date of the final decision.

(b) In an administrative or procedural conflict, as opposed to a conflict of authority, which is not treated in this chapter, between State and county agencies, any State or county department head involved in

The department shall prepare a schedule for monitoring terms and conditions of consolidated permits that shall be accepted by the consolidated permit application and review team. The department shall monitor permitting agencies' monitoring activities to assure permit compliance is being monitored. The monitoring schedule will identify terms and conditions of compliance, dates of monitoring, federal and other agencies and individuals who shall carry out the monitoring activity, and the date the report of the monitoring activity shall be sent to the department. The department shall maintain a log of the monitoring activities and shall alert the appropriate permitting agency if monitoring for permit compliance is not being carried out on schedule. If necessary the department in conjunction with the affected agency or agencies shall enforce all terms and conditions related to any permit.
 [Eff:] (Auth: HRS Sec. 196D-9)
 (Imp: HRS Sec. 196D-5)

Section 12-185-16 Enforcement of District Boundary Amendments and Special Permits. The department shall enforce compliance with conditions placed on reclassifications of district boundaries and terms and conditions of special permitted activities.

(a) Whenever the department shall have reason to believe that there has been a failure to perform according to the conditions imposed, the department shall issue and serve upon the party bound by the conditions an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.

- (1) The department shall serve the order to show cause in writing by registered or certified mail with return receipt requested at least thirty days before the hearing. A copy shall be also sent to all parties in the boundary amendment proceedings;
- (2) The order to show cause shall include:
 - (A) A statement of the date, time, place, and nature of the hearing;
 - (B) A description and a map of the property to be affected;

- (C) A statement of the legal authority under which the hearing is to be held;
- (D) The specific sections of the statutes, or rules, or both, involved; and
- (E) A statement that any party may retain counsel if the party so desires.

The department shall conduct a hearing on an order to show cause in accordance with the requirements of chapter 91, Hawaii Revised Statutes. Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order, or default. Post hearing procedures shall conform to chapter 91, Hawaii Revised Statutes. Decisions and orders shall be issued in accordance with chapter 91, Hawaii Revised Statutes. The department shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification.

(b) Whenever the department finds that there is prima facie evidence that breach has occurred the special permit shall be automatically suspended pending a hearing on the continuity of such special permit provided that written request for such a hearing is filed with the department within ten days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten day period the department may revoke said special permit. [Eff:]

(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-10)

Summary Minutes

Public Hearing 6/21/89 7:00 p.m.
Campus Center, University of Hawaii Hilo Campus

Administrative Rules for Act 301, SLH 1988

On June 21, 1989 at 7:00 p.m. Mr. Dan Lum and Ms. Janet Swift of DLNR opened a public hearing to listen and record for the record testimony from the public and others. A court reporter was present to make a record of the proceedings.

Some 50 members of the public signed the attendance sheets (copies attached) and another 15 signed up to testify. The majority of those testifying are in favor of moving very slowly, deliberately and carefully in planning for geothermal development on the Big Island. Some were completely against any geothermal development. Several individuals testified completely away from the subject matter at hand.

A summary of comments included the following:

Mr. Henry Ross said we should first see how the 25 MW project works out, before we go ahead into a 500 MW project. He proposed that the geothermal drilling be done on Oahu if it is for Oahu use. He said he is against the rules. He proposed that the Interagency Group be moved to the Big Island.

Mr. John Tan said we need to be energy self sufficient and therefore geothermal is a good thing, but we must make sure it will be done properly and safely.

Mr. Ron Philips of the Puna Community Council testified that the administrative rules do not reflect the legislative intent. He said that the community had to hire an attorney to review the rules. He read the attorney's analysis of problems to the rules and submitted a copy of the analysis to DLNR.

Mr. Tim Sullivan read excerpts from a June 1989 National Geographic article regarding extinct and endangered species in Hawaii, which reported that Hawaii is unusually high in numbers of extinct animals and species.

Mrs. Jennifer Ferry referred to Hawaii's state plan and its purpose, and suggested that these rules should have provision for notification of all landowners within a certain boundary in case of a proposed district boundary amendment. She requested more public input into the rules.

Mr. Jim Blakey expressed disappointment that DLNR would be the lead agency for a project affecting the lives of people on the

Big Island. He requested the County work with the citizens for a cleaner approach to geothermal development than DLNR has been involved in.

Mr. Delan Ferry suggested a one year minimum permit review period for geothermal development projects. He also suggested permitting agencies contract studies to investigate developers' claims.

Mrs. Barbara Bell urged denial of the rules until several changes are made; she requested a one year minimum permitting review period. She requested establishing an Environmental Compliance Officer to be funded in part by the geothermal industry. She suggested information be made available to the public, not just to developers. She suggested the annual report be distributed free to members of the public.

Mr. Michael LaPlante demonstrated BCoD or noise and said that is what Mr. Rod Ross said would be the sound level during well drilling operations. (The noise was very loud.) Mr. LaPlante also demonstrated the sweat or rather, eggs by wearing such a suit on his body. The sweat was so strong that the court reporter, near whom he sat, had to ask him to move. Mr. LaPlante ask that it be made part of the record that he was asked to move, just, as he said, as the geothermal developments are making him move from his home. Mr. LaPlante said that he is a party against the land swap. He feels this land exchange is unfair. He felt that the State should make proper settlement with the residents. He asked who would be liable for ill effects of geothermal development, who would pay for insurance and for toxic waste cleanup. He said he resented the utility's threat of having to install a large coal burning facility on Maui if the large geothermal project does not go through.

Mr. Robert Patrichi testified that he grew up in California and observed the environment there deteriorate over the years. He said he is now seeing the same thing in Hawaii. He felt that the rules are written to help the developer. He felt the subzone should be moved away from his home.

Mr. Steve Philips said he takes exception to the rules because he feels they are cutting the people most affected out of the process. He feels it is big moneyed people who are cutting the little people out of the process. He feels his livelihood as a small flower farmer is threatened.

Mr. Ulalela said that Madame Pele is nuha with Campbell Estate and Helco and threatens to do bad things if the Puna Reserve land is devastated. He said that all that will remain will be ashes if this happens.

Mr. Clive Cheetham expressed disappointment that only two

officials from DLNR were present for the hearing. He said that Oahu should reduce its electrical usage through conservation. He asked what would happen to electricity users on Oahu if the cable breaks down. He felt scrapping the entire project would be preferable to going ahead with it.

Mr. Duane Kanuha of the Hawaii County Planning Department read a letter to Mr. Paty asking if the consolidation efforts will be meaningful, and offering continuing assistance to work out the complexities of the various permitting processes.

Ms. Helene Shinde spoke about endangered species and her concern that their habitats be protected.

Dr. Emmet Aluli of the Pele Defense Fund testified that the hearing notice was not substantive enough. He expressed concern that the central permitting process will carry over into other kinds of developments that will affect the Big Island adversely. He cited a 240 MW electrical project at Campbell Industrial Park and asked why does 500 MW need to be generated from the Big Island when this other project is going on.

The last speaker having been heard, Mr. Lum announced that additional written testimony would be accepted through July 7, 1989. He ended the hearing at approximately 9:18 p.m.

The hearing ended at approximately 9:18.

PUBLIC HEARING JUNE 2, 1989, DLNR
PROPOSED REVISIONS TO CHAPTER 185, "RULES OF PRACTICE AND PROCEDURE FOR
GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT PERMITTING"

COMMENTS ON PUBLIC NOTIFICATION AND INTERVENTION

We live in a very unique and special place.
Hawaii was the first of the fifty states to have a General Plan. It was prepared in response to the State Planning Act of 1957 and subsequently passed by the 1961 State Legislature as the Land Use Law, whose intent is to protect agricultural lands and to promote the public welfare.

Provisions were made to allow for boundary changes and special permit procedures which included the process of a first review at the County Planning Commission level and then a final review at the State Land Use Commission level.

These provisions allow for public hearing and notification of adjacent residents and landowners within 300' of the property line. In determining which parties may intervene in the hearing proceedings, the Land Use Commission MUST allow all persons who can show that they will be directly and immediately affected by the change in a way that is clearly distinguishable from the general public. THIS COULD INCLUDE ADJOINING RESIDENTS AND OWNERS. Other persons may petition to intervene and the Commission MAY turn down such a petition under certain criteria.

With regard to geothermal development, we have new rules being proposed tonight which have flaws especially regarding the passages relating to public notice and intervention.

There is no special and CRUCIAL provision for notification to property owners and residents within a certain distance from the proposed geothermal development site. Special permits, general plan amendments, and boundary amendments require written notice to those 300' from the property line. Since geothermal development has been known to be so noxious and/or disruptive to neighboring areas as indicated in suits filed in Nevada against Yankee Caithness Joint Venture and against Ormat/Far West Geothermal, we need to review the 300' notification line to determine if that is adequate.

Further under the proposed rules, the DLNR SHALL deny an application from ANY MEMBER of the public, if it appears it is substantially the same as the position of a party already admitted to the proceeding OR if admission of additional parties will render the proceedings inefficient and unmanageable. This appears again to be an attempt to keep the affected public from the decision making process. The LUC regulations which this new rule will replace provide that the department MAY (not SHALL) determine denial, and clarifies that both reasons must be met AND (not OR).

There appears to be a grave neglect of public concern and input in these new rules and I ask you to reconsider this proposal.

One other recommendation I would like to add is that stated in the Eckbo, Dean, Austin and Williams report made in 1969 in regard to the five year boundary review:

"In our opinion the most serious shortcoming in the Rules was the lack

of "a requirement that the commission employ written majority opinions on all decisions."

We could follow the practice of the Supreme Court and expand that to include written majority and minority opinions on all decisions.

Thank you for your time.

Jennifer Perry
Kapoho resident
Box 537
Pahoa 96778

Testimony on Proposed Rules to Streamline Geothermal Development Permitting, DLNR, 6/21/89

I have read the proposed Chapter 185 to Coordinate and Streamline Geothermal Development.

According to my dictionary, streamline means that shape of a solid body which is calculated to meet with the smallest amount of resistance in passing thru the atmosphere. In this case the proper review of important drilling, health, landuse planning, and community concerns.

Geothermal development will not be facilitated except in the short term by accepting driller and developer programs without independent assessment of their claims. In the long term the streamlining that would result from these rules will further remove the two agencies who now take the most careful and comprehensive look at these industrial uses: the County Planning Commission and the affected community.

For good future planning with the least negative impacts, any project should have at least a one year permit process. The affected public must be involved at a very early stage and the permitting agencies should be contracting studies to assess the validity of developer's claims. BACT and land use conflicts must not be left to the developer's discretion.

Drilling regulations must be upgraded to mitigate devastating problems. DLNR is not yet equipped to properly review even the drilling permits. Case in point is the SOH permit which after approval was withdrawn by the UH when, after public inputs, they began to recognize the high level of danger their plan entailed by not casing down to at least 4000' and proper anchoring at that depth.

These rules would also:

1. destroy the concept of land use zones, usurping the counties authority to regulate appropriate development in ag and rural districts (pg 185-6); and making geothermal development the primary landuse regardless of pre-existing uses.
2. allow for ignoring any county conditions (pg 185-15) if the county consents to these rules,
3. freeze out (landowners and residents) most any person with legitimate rights from contesting any decision (pg. 185-7).

I urge that these rules not be adopted as they will make careful and independent review far less likely, and in the long run result in consequences no one will be able to live with. I also urge the DCH and the Counties to have no part in this consolidated permit process.

Streamlining geothermal permits will only hasten the mistakes that increased public input and agency reviews could catch.

I believe these rules go far beyond the legislative mandate of Act 301
Respectfully submitted,

Dejan Perry
Box 537
Pahoa, HI 96778

June 21, 1989


TESTIMONY FOR PUBLIC HEARING ON TITLE 13, CHAPTER 185 (SUB-TITLE 7)

I urge denial of these RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT PERMITTING that will be streamlining the permitting process until several changes are made.

1. The process has 365 days, one full year, not 180, for careful review and sufficient time for commentary from all agencies and the public.
2. There is an Environmental Compliance Officer or Board as a liason between the State and the Public. This position should be at least half funded by the Geothermal Industry.
3. The Contested Case provisions allow more than one hearing.
4. The Information Services Center has provisions for the community to receive information just as easily as permit applicants.
5. The Annual Report to the Governor shall be avaiable to the community at no charge.

In closing, I would like to add that I strongly object to the wording on virtually every page that states that the State of Hawaii wants to help in any and all ways any applicant involved in a Geothermal or Cable system. I see in print how when my State Government wants something they go after it. I will believe the Geothermal and Cable development on the Island of Hawaii is beneficial and benign only when these Rules give much more latitude to the Community for input and timely conflict resolution out of Court.

Thank you,


Barbara Bell, Vice-President, Kapoho Community Association



RECEIVED (C-DC)
7/10/89

Hawaii Island

Chamber of Commerce

Established in 1897 • 180 Kinoaie St. Suite 118 • Hilo, Hawaii 96720 • Phone (808) 935-7178

RECEIVED

CHAMBER OF COMMERCE JUL 11 1989

July 6, 1989

DIV. OF WATER &
LAND DEVELOPMENT

Division of Water and Land Management
Department of Land and Natural Resources
P.O. Box 373
Honolulu, Hawaii 96809

Dear Sirs:

The Hawaii Island Chamber of Commerce has reviewed the proposed Hawaii Administrative Rules of the Department of Land and Natural Resources under Title 13, Sub-title 7, Water and Land Development, designated as Chapter 185, "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting."

We are keenly aware of the passage of many frustrating years without commercial development of our vital Hawaiian geothermal resource while other states and foreign countries have literally "passed us by". We are also mindful of the fact that electricity generated from geothermal energy does not require imported fossil fuel, which drains dollars from Hawaii and contributes to the greenhouse effect through the production of carbon dioxide.

We wholeheartedly support the stated purpose of the proposed rules, namely: "Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state and county land use, planning, environmental and other related laws and regulations that effect geothermal and cable system development." We believe that the consolidated permitting procedure, channeled through and guided by the lead agency, the Department of Land and Natural Resources,

will, in fact, reduce inefficiencies, delays and duplications of effort. It should also provide a more predictable time frame for completion of project permitting, which is crucial to most sources of financing. We commend the statement in Section 13-185-4 that "...the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law..."

The transfer to the Department of certain functions from the Land Use Commission and the Department of Transportation, covered in Section 13-185-3, appears to be a reasonable step toward simplification, especially since other agencies may be more directly involved in these matters and still maintain their approval processes.

We also note that there is ample provision for dispute resolution (between agencies), although disputes would seem unlikely, given the degree of protection all applicable agencies retain in respect to their existing permitting authorities.

The Hawaii Island Chamber of Commerce therefore gives unqualified endorsement to Chapter 185 Proposed Rules of Practice.

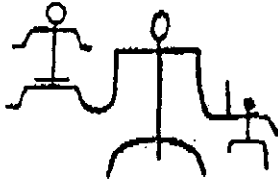
Sincerely yours,

A handwritten signature in black ink, appearing to read "PM Poppe". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Patricia M. Poppe
President

FROM: CIVIL LEAGUE P.O. BOX 10000 (SPT) 5 9 36 PG 22 PAGE 1

Citizens for Responsible Energy Development with Aloha Aina



CREDAA
P.O. Box 358
Mt. View, Hawaii 96771

7 July 1989

Department of Land & Natural Resources
Division of Water & Land Development
P.O. Box 621
Honolulu, Hawaii, 96809

COMMENTS ON
DRAFT RULES
TITLE 13, SUB-TITLE 7
CHAPTER 185

Sirs:

CREDAA, as a member organization of the Puna Community Council, incorporates by reference all comments submitted by the PCC regarding these Draft Regulations, particularly those submitted by attorney Cynthia Thielen. In Addition, we offer the following comments:

Page 185-3, Section 13-185-2: The definition of "Geothermal & Cable System Development Project" lumps generation and transmission. Since transmission line issues are, in and of themselves, sufficiently different and complex, they should have a separate hearing.

Pages 185-4, 5&6, Section 13-185-3: This entire section violates the intent of Act 301 (see Conference Committee Report No. 206, 1988, page 2, paragraph 10) in that it removes the county's jurisdiction re: land use functions and allows DLNR too much discretion to exclude the Public from input. Further, there is no avenue for the excluded Public to appeal such exclusion!

Page 185-8, Section 13-185-7: The "Permit Information & Co-ordination Center" set up in this section MUST be Developer financed! The Public has already subsidized too much geothermal development.

Page 185-14, Section 13-185-14: "Conflict Resolution Process" set up here differs depending on whether it is between State agencies or State and County and further biases the process in favor of the State over the County. The procedure should be the same in both cases and the Public must be involved as well.

Page 185-16, Section 13-185-15: "Monitoring...of Permits". The monitoring log required here MUST be available ON THE BIG ISLAND for review by the public.

Submitted by

Earl Dunn, Vice-president, for CREDAA



P U N A

Community Council, Inc.
P.O. Box 1294 Pahoehoa, HI 96778

21 June 1989

President
Ronald Phillips
Vice President
Richard Miner
Secretary
Clara L. Kakalia
Treasurer
James Moulds
Immediate Past President
Kini Pe'a

Department of Land and Natural Resources

Re: Proposed Administrative Rules for Geothermal
and Cable System Development Permitting

Members:
Alinaloa
Citizens for Responsible Energy
Development with Aloha Aloha
Ecob
Eden Roc
Fern Acres
Fern Forest Community Assn.
Hawaiian Acres Community Assn.
Hawaiian Beaches Hui Kahakai
Hawaiian Shores
Kalani Honua
Kalapana Community Org.
Kalapana Gardens
Kupohu Community Assn.
Ke Aloha Ka Alua O' Puna
Keahialaka Community Assn.
Koa'e Community Assn.
Orchid Land
Pahoehoa Business Assn.
Paradise Hui Hanalike
Parish Council
Puna Hui Ohana
Volcano Community Assn.
Waa Waa

The Puna Community Council, having reviewed the Department of Land and Natural Resources (DLNR) proposed Administrative Rules for Act 301, Senate Bill 3182 finds that the rules do not reflect the intent of the State Legislature. The Puna Community Council provided extensive testimony during the legislative process and assisted in shaping the final version of Senate Bill 3182.

It is our conclusion that DLNR has misinterpreted the intent of the proposed administrative rules and if the rules are implemented in their present form will do more to damage geothermal development than to support it.

Once again, the community has had to engage legal services to provide an analysis for the state and to preserve the integrity of all affected parties. We are resolved to work with all necessary groups to ensure that the development of geothermal, as an alternative energy source, is consistent with the protection of the environment and the community.

The Puna Community Council, therefore, offers the attached analysis for your consideration.


Ron Phillips
President

CYNTHIA
THIELEN

ATTORNEY AT LAW

345 Queen Street
Suite 700
Honolulu, Hawaii
96813

Telephone
808/599 4141
Facsimile
808/521 3506

June 14, 1989

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Proposed Administrative Rules for Geothermal and Cable System
Development Permitting

To Whom It May Concern:

I.

INTRODUCTION

On behalf of the Puna Community Council, I am submitting comments on the Proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting (hereinafter "proposed Administrative Rules") of the Department of Land and Natural Resources (hereinafter "DLNR"). The proposed Administrative Rules are intended to implement the Geothermal and Cable System Development Permitting Act of 1988, Act 301, Session Laws of Hawaii, 1988 (hereinafter the "Act"). DLNR cannot through the proposed Administrative Rules confer upon itself, power and authority in excess of the statutory authority set forth in the Act.

II.

COMMENTS

Comments on the proposed Administrative Rules follow the sequence of the regulatory provisions and are not listed in order of importance.

A. Section 13-185-2 Definitions.

A definition for "Intervenor" should be included in this section and should provide: "Intervenor" means a person or agency who can show a substantial interest in the matter.

B. Section 13-185-3 (a). Transfer of functions.

1. Intervention. The ability to intervene is severely restricted. The proposed Administrative Rules provide that persons must "demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public. . ." (Emphasis added.) This stringent standard would grant the DLNR power to deny admission to virtually any person. Existing Administrative Rules of State and County agencies do not contain such unwarranted restrictions.

The language should be changed by replacing the above section with the following:

All other persons may apply for leave to intervene, which shall be freely granted, provided the department may deny

an application to intervene when, in the department's discretion it appears that:

- (1) The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

See, Section 15-15-52(c), Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules.

In other words, this revision would require that the position of intervenor be substantially the same as existing parties and the admission of additional parties would make the proceedings unmanageable and inefficient. The test is conjunctive which protects the right of persons to freely intervene. See, Akau v. Olohana Corporation, 65 Haw 383, 386-390 (1982); and see expansive standards allowing various organizations standing to challenge agency action enunciated by the Hawaii Supreme Court in Mahuiki v. Planning Commission, 65 Haw. 1, 7-8 (1982); Life of the Land, Inc. v. Land Use Commission, 63 Haw. 166, 171-77 (1981); Life of the Land v. Land Use Commission, 61 Haw. 3, 6 (1979); Waianae Model Neighborhood Area Ass'n v. City and County, 55 Haw. 40, 43-44 (1973); E. Diamond Head Ass'n v. Zoning Board; 52 Haw. 518, 523-24 (1971).

As presently drafted, the proposed Administrative Rules permit DLNR to deny leave to intervene from any member of the public in either instance: if the position is the same as an admitted party or if addition of a party would make the proceedings inefficient and unmanageable. Although the Petitioner would qualify for intervention, the DLNR could deny the application if it decides intervention could make the district boundary amendment proceeding "inefficient" and "unmanageable." This grant of authority should be eliminated from the proposed Administrative Rules as it conflicts with the liberal judicial standards approving standing for community organizations. Id.

2. Appeal of Denial. A provision should be added providing for direct appeal in the event intervention is denied:

A person whose application to intervene is denied may appeal such denial to the Circuit Court pursuant to Section 91-14, HRS.

See, Section 205-4(e)(4), HRS.

C. Section 13-185-3(b). Transfer of functions (continued).

This section of the proposed Administrative Rules empowers DLNR to grant special use permits ("SUP") within agricultural and rural districts. This is a County function. See Section 205-6, HRS.

Counties have jurisdiction over uses within agricultural and rural districts involving land of less than fifteen acres; for land

areas greater than fifteen acres, the County planning commissions' decision is subject to the Land Use Commission's ("LUC") approval, approval with modifications, or denial. Id. Only this latter function of the LUC may be transferred to the DLNR. Accordingly, section 13-185-3(b) should be redrafted to make it clear the DLNR is not usurping authority of the Counties. See, the Act, Sections 196D-9 and 196 D-10, (a)(1), HRS.

D. Section 13-185-4. Consolidated permit application and review process.

This section provides that the jurisdiction and authority of any agency under the existing law is not affected or invalidated "except to the extent that permitting functions have been transferred to the department for the purposes of the project . ." (emphasis added).

Does this provision mean those functions only of the Land Use Commission and Department of Transportation which are transferred by the Act, Section 196D-10(1)(2), HRS, or does the provision imply that permitting functions not authorized by the Act are to be transferred at the discretion of the agency? This unclarity could be eliminated by adding "by the act" after the word "transferred."

E. Section 13-185-5 Contested Case Provisions.

1. If an agency is to issue permits sequentially, are all the permit applications required to be submitted at one time in order that that agency, county or state, can address all issues

at the single contested case proceeding? The first sentence of this section should be reworded to clarify that the contested case would address all permit applications to be issued by the agency which are subject to contested cases.

2. The second sentence providing for appeal from a decision should include "appeal from a decision made by the agency pursuant to a contested case,"

F. Section 13-185-6, Streamlining.

The second sentence provides:

The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting for geothermal and cable system development projects.

It is unclear if this sentence means the purpose of DLNR permit tracking is to allow DLNR to "consolidate permitting for geothermal and cable system development projects" or if that provision only defines why certain permitting functions were transferred to DLNR. If it is the latter case, the words are superfluous and should be eliminated. If it is the former case, the legislature has not granted this authority to DLNR.

G. Section 13-185-14 Conflict resolution process.

The Act provides that a mechanism to resolve conflicts shall be incorporated into the consolidated permit application and review process. Section 196 D-4(b)(5), HRS. Section 13-185-14 of the proposed Administrative Rules sets forth the conflict resolution process. In the event conflict between state and county agencies cannot be resolved, the proposed Administrative Rules provide in Section 13-185-14(b):

The administrative director or the administrative directors' designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

Where a county permitting authority is in conflict with a state agency over a permit application, this section removes the county's

jurisdiction over the permit. The state administrative director renders a decision and the county must implement the state decision forthwith.¹

This section exceeds the statutory authority in the Act, Section 196D-4(b)(5), HRS; this section violates Section 196D-5(c)(5) of the Act which states:

The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the department for purposes of the project.

See also, Section 196D-9, HRS, Construction of the Act; rules:
"[the DLNR has the authority to make rules to implement the Act] provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law."

H. Section 13-185-15. Monitoring applicants' compliance with terms and conditions of permits.

This section of the Proposed Administrative Rules sets forth the scheme for monitoring and, if necessary enforcing the

¹A similar provision applies to conflict between State departments with the Governor rendering the decision.

Department of Land and Natural Resources
Division of Water and Land Development
June 14, 1989
Page 9

geothermal and cable systems development applicant's compliance with permit terms and conditions.

Article XI, Section 9, of the Constitution of the State of Hawaii gives the public standing to enforce, through the courts, laws relating to environmental quality which include conservation, protection and enhancement of natural resources and control of pollution. Section 13-185-15 of the Proposed Administrative Rules should include a provision by which an organization or private party can sue for injunctive relief where the applicant is violating permit terms and conditions, and the DLNR is not enforcing compliance.

III

CONCLUSION

Please address any response to these comments to my address with a copy to the president of the Puna Community Council:

Ron Phillips, President
Puna Community Council
Star Route 6637
Keaau, Hawaii 96749

DATED: Honolulu, Hawaii June 14, 1989.

Respectfully submitted,


CYNTHIA THIELEN

W L
RUSSELL S. KOKUBUN
Chairman & Presiding Officer

RECEIVED



30 JUL 12 AIO: 03

COUNTY COUNCIL

DIV. OF WATER & LAND DEVELOPMENT
County of Hawaii
County Building
25 Aupuni Street
Hilo, Hawaii 96720

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JUL 19 1989

GEOHERMAL/CABLE
PERMIT CENTER

July 6, 1989

Mr. William Paty, Chairperson
Board of Land and Natural Resources
1151 Punchbowl St.
Honolulu, Hawaii 96813

Dear Mr. Paty:

I would like to convey to you my personal views regarding the proposed administrative rules relating to geothermal and cable system development permitting.

The proposed rules are intended to carry out the provisions of Act 301 enacted by the State Legislature in 1988, codified as Chapter 196D, Hawaii Revised Statutes, to streamline and consolidate geothermal and cable system development permitting. As noble as this effort may be in attempting to accelerate geothermal development, weaknesses in the enabling legislation have resulted in similarly questionable rules.

First, the major area of concern from the county's standpoint is the potential usurption of county zoning powers as a result of transferring zoning powers to the Department of Land and Natural Resources. I understand that the rule must reflect the intent of Act 301, which does indeed transfer this authority, however, if it is not the intent of Act 301 and the proposed rules to override the counties in zoning and geothermal resource permitting as has been stated in recent news releases, then clarification is certainly in order. It is imperative that this point be addressed legislatively so that it is clear that the county retains its authority for zoning and for granting geothermal resource permits. Lack of clear lines of jurisdiction in this area will only lend itself to further delays in geothermal development permitting, contrary to the basic intent driving the proposed rules.

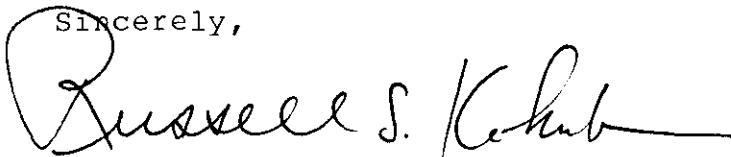
Mr. William Paty, Chairperson
Board of Land and Natural Resources
July 6, 1989
Page 2

Second, Section 196D-4 HRS directs the DLNR to incorporate into its consolidated permit application and review process a mechanism to resolve any conflicts that may arise between or among departments or agencies. The proposed rule designates the administrative director of the affected State department as the ultimate decision maker in conflict situations arising between the State and the County, and in the case of State-State conflicts, the Governor shall be the decision maker. The former provision appears to extend beyond the parameters of the law in granting additional decision making powers to the State and infringes once again upon the county's jurisdiction. I would suggest instead that mediation be used to resolve any conflicts that may arise. Mediation is currently being used in other geothermal proceedings and would be a more consistent and equitable process.

Third, the proposed rules are inconsistent with Chapter 196D with respect to the definition of the consolidated permit application and review team. Chapter 196D states that the consolidated permit application and review team shall consist of members of the interagency group, which is to be comprised of those agencies whose permitting functions are not transferred by Section 196D-10 to the DLNR. However, the rules refer to a "working team" to be known as the consolidated permit application and review team which shall be selected from among representatives of agencies having jurisdiction over any aspect of the project. Clarification is needed in this area.

I would ask that the Board seriously consider deferring action on the proposed rules and seek legislative action to clarify the transfer of zoning powers to the DLNR. I would also urge the Board to redraft its administrative rules to reflect the above identified points.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell S. Kokubun". The signature is fluid and cursive, with a large initial "R" and a long horizontal stroke at the end.

Russell S. Kokubun, Chairman
Hawaii County Council

Bernard K. Akana

Mayor

Duane Kanuha

Director

William L. Moore

Deputy Director



Planning Department

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

July 7, 1989

Mr. Manabu Tagamori, Manager
Div. of Water & Land Development
Dept. of Land & Natural Resources
P. O. Box 621
Honolulu, HI 96809

Dear Mr. Tagamori:

This is to follow up with respect to our comments of June 21, 1989 on the proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting. We appreciate the opportunity to provide you with our detailed comments on this matter.

Our comments on the various sections are as follows:

1. Section 13-185-3 Transfer of functions. The proposed language is unclear with respect to the specific permitting responsibilities to be transferred under Section 205.5, HRS. Consequently, we would suggest the following:

"The following functions are transferred to the department: The functions of the Land Use Commission related to district boundary amendments as set forth in Section 205-3.1 et seq., Hawaii Revised Statutes; and functions of the Land Use Commission related to [changes in zoning] special permits as set forth in Section 205-5, Revised Statutes;.."

2. With respect to Section 13-185-3(a) Relating to Amendment to District Boundary Amendments:

- * Is the intent to require an EIS/EA for all petitions? Presently, it is only required if the petition involves Conservation lands or if one of the other "trigger" is activated (State lands, etc.).
- * Director of DPED needs to be amended to OSP.
- * Is the intent to operate as a contested case? If so, it doesn't make sense to have the Department both a party to the proceedings as well as the decision-making authority. It may be cleaner to give the Board the decision authority.

Mr. Manabu Tagamori

July 7, 1989

Page 2

- * The County should be an automatic party to any SLUC Boundary Amendment proceeding. This is consistent with the current SLUC Rules.
 - * The Rule must include a basis for granting or denying a petition. This basis is presently contained in Sub-Chapter 8 of the SLUC Rules.
3. With respect to Section 13-185-3(b), the provisions of Sub-Chapter 12 of the SLUC Rules should be incorporated including:
- * Special Permit involving area greater than 15 acres require approval of the County Planning Commission and the Department.
 - * Guidelines for determining "unusual and reasonable" uses.

This would maintain County's present authority and responsibility in this area.

4. Section 13-185-5

Without more information, we're not sure how this provision will be implemented. The individual agencies currently decide on the consolidation of hearings for various permits. The Rule implies that it may be mandated to hold only one contested case proceeding. Who will do the requiring and what will the criteria be? Until we understand how this provision will be implemented, we reserve further comment.

5. Section 13-185-6 Streamlining.

- * Chapter 1960-7, HRS, requires public review of any streamlining measure adopted by the Department. This provision or public review is not included the Department Rule.
- * We're not sure how the streamlining measures as may be adopted by the Department may affect the current responsibilities of the Agencies whose permitting responsibilities has not been transferred to the Department. This provision may be inconsistent with Section 13-185-13 which states in part that the permit consolidation process shall not affect or invalidate the jurisdiction or authority of any Agency under existing law.

Mr. Manabu Tagamori
July 7, 1989
Page 3

- * This section authorizes the inter-agency group to consider and adopt changes in procedure to streamline the permitting process. The inter-agency group, as conceived by this Rule, includes 8 Federal members, the majority of which have no permitting function, and 4 State and 3 County members. If the group is going to be given this authority, the Federal agencies can dominate the State's permitting process.

6. Section 13-185-11 Inter-agency Group.

A majority of members of the proposed inter-agency group does not have any permitting functions. Rather than list specific agencies, we suggest the following:

In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an inter-agency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department. [including but not limited to the following...]

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the inter-agency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

7. Section 13-185-12 Consolidated Permit Application and Review Team,

The draft language allows the Department to select the working team. This now means that some agencies with permitting responsibilities could be excluded from participation on the joint agreement.

We therefore are suggesting the section to be amended as follows:

- (a) Upon receipt of a consolidated permit application, the department shall select a working team known as the consolidated permit application and review team from among representatives of agencies having jurisdiction over any aspect of [the project] that application.


Mr. Manabu Tagamori
July 7, 1989
Page 4

8. Section 13-185-14(b) Conflict Resolution Process.

Rather than naming the Administrative Director and the head of the Mayor's designated agency, the rule should simply name the Governor and Mayor of the affected County or their designees.

Again, thank you for the opportunity to provide you with our comments. We look forward to continued discussion with you on the important matter.

Sincerely,


DUANE KANUHA
Planning Director

WLM:aeb

Geothermal Public
Hearing

June 21, 1989

PLEASE PRINT CLEARLY

GENERAL ATTENDANCE
SIGN IN SHEET

"HILO"

ADDRESS
AND PHONE NO.

ORGANIZATION

PLEASE PRINT
NAME

JOHN TAN	821-14 KAHAI LANI ST. 9577593	SELF
Lester Charles Brandt	Box 10855, HILO, Hawaii 96721	CONCERNED STUDENT UH-HILO
Ing Mae Martinez	#331- 355 Kalaniana'ole Ave - Hilo	Student - UH - Hilo
RALPH L. YOST	15-2713 N. HEE ST., PAHOA, HI 96778	PCC
CAROLYN YOST	15-2713 N. HEE ST., PAHOA, HI 96778	
BOB BAILEY Puna/Kau Ind. Assoc	P.O. Box 10680 Hilo HI 96721	Puna/Kau Ind. News
W.R. CRADDICK	P.O.B 4398 Hilo HI 96720	SELF
Ron Phillips	SR6637 - Keaau 96749	Puna Community Council
Don Jacobs	Box 595 Pahoa 96778	ECOH
Milton Papineau	SR. 6210 Keaau 96749	Puna Community Council
ALBERT A. NAKASI	614 KIKAUHA AVE. HILO 96720	SELF
Henry Ross	Box 99 Kapaa 96755	KAC
Steve Phillips	Box 1267 KEAUA 96749	SELF
Tom Sullivan	13-3622 Nohog Pahoa	Self
Alfred Tong	104 Alae St. Hilo	Self
Delan Perry	Box 537 Pahoa	self
Shervic Moore	B.R. 6014, Keaau	P.C.C.
Barbara Bell	PO Box 1310 Pahoa	Kapoho Comm Assoc.
Cheryl Ramos Bluff	25 Aupuni St Hilo	Assoc Asst Council Chairman
William Huen	" " "	County Council
JIM BLAKEY	PO Box 328 PAHOA	KAPHO Comm
Fernando Juicy	POB 1414 Pahoa	Self

Geothermal Public
Hearing
June 21, 1989

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GENERAL ATTENDANCE
SIGN IN SHEET

"HILD"

[illegible]

Geothermal Public Hearing

June 21, 1989

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GENERAL ATTENDANCE
SIGN IN SHEET

(3)

"HILO"

NAME

ADDRESS
AND PHONE NO.

ORGANIZATION

ROLAND HIGASHI	714 KANOELEHUA HILO	HAWAII ISLAND CHAMBER OF COMMERCE
CLIFF TSUJI	525 K. LOUEE HILO	JAPANESE Chamber
Jennifer Perry	Box 537 Pahoa	Kapoho Com Assn
Oliver Cheatham	P.O. Box 1513, PAHOA	KOA'E Con. Assn.
ANNE WHEELER	Box AB KURTSTOWN 96760	MAU AWA FARM
JIM ALBERTSON	Box AB KURTSTOWN 96760	MAU AWA FARM
PERRY HOTCHKISS	P.O. Box 251 MT. View, HI, 96771	EDEN ROC ESTATES ASSN
DICK MINER	Box 1215 KKAU HI	P.C.C.
STEVEN TACHIKAWA	P.O. Box 841 KAPA'AN HI	
SUZANNE E HALL	P.O. Box 681 Mt. View 96771	Self
BOB PETRIE	PO Box 681 mt view 96771	Self
Terice Monfreda	Box 33 Mt View	CREDAA
	CREDAA BOX 358	"
BARBARA KENDER	"	"
✓ Maria Moreno		"
✓ Peter Leardi	P.O.B. 263 Mt. View, HI.	CRIZ DPA
✓ Carl Swett	Box 33 Mt View	9688056
Lynne Goldstein	SR5654, Kapa'au 96749	Orchid Land Comm Assn
Denver Leaman	Box 888 PAHOA 96778	GREENPEACE
✓ W. Siefert	2405 KALANIANAKOHA	SELF
Robert Petricci	P.O. Box 2011	LEICANI SST HOMEOWN
✓ Rummik Ahui	POB 34 Kapa'au HI 96748	Pale Defense Fund
Karel's Ulaeo	RR1 Box 6101 Pahoa, 96778	

①

SIGN IN SHEET

H I L O

PLEASE PRINT CLEARLY

INDIVIDUALS WANTING TO SUBMIT ORAL OR WRITTEN TESTIMONY
SIGN IN SHEET

PLEASE PRINT

2. ^{TAN} JOHN TAN	82-1-W-KAWILIARI ST. 917593	SELF + PEOPLE
3. Ron Phillips	SR 6637-Koaaau, HI 9166-6113	Puna Community Assoc
Henry Ross	Box 99 Kapaau 96755	K.A.C.
Steve Phillips	Box 1267 KENDU HI	SELF
4. Tim Sullivan	13-3622 N. Chen st,	SELF
5. Jennifer Perry	Box 537 Pahoa	self
6. JIM BLAKEY	PO Box 328 PAHOA	K.A.C.
1. Delan Perry	Box 537 Pahoa	self
8. Barbara Bell	PO Box 1310 Pahoa	Kapoho Comm Assoc.
9. Michael LaPlante	P.O. 1037 Kilauea	SELF + Family
10. Robert Pstake	P.O. Box 2011 PAHOA	HOMEOWNERS COUNCIL
11. Steve Phillips	PO Box 1267 KENDU HI	SELF
12. Ka'olelo Upala	RR1 Box 6101 Pahoa	

②

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PLEASE PRINT CLEARLY

ORGANIZATION

[illegible]

GEOTHERMAL PUBLIC HEARING

③

JUNE 21, 1989

H I L O

Testimony

PLEASE PRINT CLEARLY

INDIVIDUALS WANTING TO SUBMIT ORAL OR WRITTEN TESTIMONY
SIGN IN SHEET

[illegible]

1 (cont)
15

MEMORANDUM FOR THE RECORD

FROM: Dean Nakano and Ed Sakoda

SUBJECT: Public Hearing on the Proposed Administrative Rules for Act 301, SLH 1988 (Chapter 196-D, HRS), Held at Kahului, Maui on June 21, 1989

On Wednesday, June 21, 1989, Ed Sakoda and I went to Maui to conduct the public hearing on the Department's draft administrative rules, Chapter 13-185, entitled "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting".

The public hearing was called to order at 7:05 pm, at which time the following people were called upon to present testimony which was recorded by a court reporter:

- o Christopher Baz - resident
- o Walter Hillinger - resident
- o Beverly Fykes - aide to Councilman Wayne Nishiki
- o Carl Freedman - resident
- o W.D. Smith - resident
- o Sally Raisbeck - resident
- o Leslie Kuloloio - resident

Written testimony (attached) was received from Councilman Nishiki and Mr. Freedman which were entered into the record of the public hearing. In general, most of the testimony presented at the hearing dealt with resident's concerns about the potential impacts resulting from geothermal development and proposed deep water transmission cable project.

In addition, Mr. Kuloloio's testimony requested that the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands be made a part of the Interagency Group and consolidated review team for the purpose of monitoring potential impacts to native Hawaiian culture.

In attendance at the hearing were approximately 20 people (sign-in sheet attached), who were reminded that additional written comments could continue to be submitted to the Department until July 7, 1989.

There being no further testimony on the proposed rules, the public hearing was adjourned at 8:10 pm.



DEAN NAKANO



ED SAKODA

RECEIVED

908 Hana Hwy.
Haiku, Hi., 96708

88 JUL 3 A 9:40

June 26, 1989

Division of Water and Land Development
P.O.Box 621,
Honolulu, Hawaii, 96708

DIV. OF WATER &
LAND DEVELOPMENT

Persons concerned:

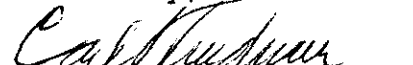
I presented written and oral testimony to DLNR at a public hearing at Maui Community College, Community Services Building on June 21, 1989 regarding the Proposed Administrative Rules for Geothermal and Cable System Development Permitting. I made an error in that testimony that I would like to correct by attachment of the addendum enclosed. I request that this addendum be attached to my written testimony and that it be considered as a correction to my oral testimony.

I realize that costs of proposed facilities are not directly relevant to the consideration of the proposed rules. However, I included information regarding the magnitude of electrical rate impacts in order to emphasize the political importance of these rules and reasons for caution in their implementation.

The errors corrected here are due to reliance upon a misprint of statistics in the Atlas of Hawaii printed by the University of Hawaii Press. Corrections are made based upon statistics taken from the "1988 Hawaiian Electric Industries Annual Report."

The errors do not effect the import of the testimony, however, they concern a politically hot issue and are prone to be cited by others. It is important that the numbers be correct and understood.

Sincerely,


Carl Freedman

COMMENTS OF CARL FREEDMAN,
908 HANA HWY.
HAIKU, HI., 96708

REGARDING PROPOSED ADMINISTRATIVE RULES
OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 185

RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL
AND CABLE SYSTEM DEVELOPMENT PERMITTING

6/19/89

Comments Regarding Due Process

Streamlining the regulatory process is a good idea in principle, but it is problematic as well. To the extent that the existing regulatory process is redundant or presently requires unreasonable entanglements with inefficient bureaucracies, society can benefit from measures to encourage communication, timeliness of permit processing, centralization of information, standardization of forms and consolidation of procedures.

To a certain extent, however, the complexities of the permitting process are due to the fundamental nature of our representative system of government with all of its checks and balances placed upon powers vested in the jurisdictions of various agencies representing various interests of the people it serves. Streamlining the regulatory process, if taken too far, can interfere with the proper, albeit sometimes complex, functioning of our governmental system. To the extent that the judicial system protects against such encroachments, zealous streamlining can be counterproductive. A reversed and remanded agency decision is not a symptom of well planned efficiency.

To the extent that streamlining sometimes represents an impatient effort to hurry a process along due to political or expedient pressures, it may serve as a serious disservice to society, as is known so very well by many electric ratepayers on the mainland who foot the bills for unneeded or nonfunctioning utility "assets." Billion dollar projects can set quite a few pocketbooks back pretty far...and line a few too.

Most of the intent and much of the wording of the proposed rules comes straight from HRS 196D. In certain parts of the proposed rules, however, DLNR goes further than the requirements of statutory law in respects that merit reconsideration. Instances where agencies exceed their statutory mandate are precisely the areas where courts are most likely to assert findings of legal

error. DLNR should proceed with special caution with respect to rules that might compromise traditional standards of due process.

Care in the protection of the rights of persons and agencies to due process is consistent with the goals of streamlining. It is a mistake to cut corners that might jeopardize the legality of time consuming hearings and procedures or compromise the wisdom inherent in our governmental process.

13-185-3 directs the department to deny an application for intervention "if admission of additional parties will render the proceedings inefficient and unmanageable." This rule is not advisable. Courts have traditionally allowed agencies to deny petitions for intervention if they are repetitious or if other intervenors sufficiently represent the interests of the petitioner. Courts have allowed the consolidation of intervenors in cases in which their interests are identical. In these instances, however, the interests of the petitioner are ostensibly being represented before the agency. The directive in 13-185-3 goes further and directs the department to reject a petition that in all other respects qualifies except for the manageability of the proceedings. Is the petitioner's right to be heard sustained? Note that 13-196-9 requires that "all procedures for public information and review under chapter 91 shall be preserved..."

13-185-5 requires that agencies conduct only one contested case proceeding. It should be noted in the DLNR rules or in the order adopting the rules that the contested case hearing should be broad in scope and that petitions for intervention should be allowed on the basis of "standing" regardless of the broadening effect intervention would have on the proceedings. Unless the contested case allows a broad enough scope to allow the hearing of all persons entitled to due process, the limitation to one hearing will violate rights to due process.

Another issue effecting due process that is worthy of note is the requirement in HRS 205-5 that state and county authorities require mediation in lieu of contested case proceedings to adjudicate contested issues. Although HRS 196D-10 transfers to DLNR the "functions of the land use commission...in section 205-5" and not necessarily responsibility for enforcing the statute with regards to its requirements for county administrative procedures, this is an issue that falls within the jurisdiction and concerns of DLNR. The requirement for mediation is a substantial variance from standard administrative procedure. Since it is a statutory provision, it may pass the test which by precedent has required administrative procedures to be consistent with HAPA, (see *Town v. Land Use Commission*, 55 Haw. 538, 524 P.2d 84 (1974) and *Ainoa v. Unemployment Comp. Appeals Div.*, 62 Haw. 286, 614 P.2d 380 (1980). The statutory language itself, however, may violate the principle of rights to due process which are constitutionally guaranteed, particularly, the right to confront issues directly by cross-examination and/or rebuttal, to have a decision based exclusively

according to a record of established facts and recourse to judicial review based upon the entire record. The mediation procedure particularly precludes these provisions. In the interests of streamlining DLNR may wish to request a declaratory ruling regarding the constitutionality of the mediation procedure adopted by rule by the County of Hawaii.

GENERAL COMMENTS

13-185-3

(1) The first paragraph is worded in such a way as to transfer all of the functions of the land use commission and department of transportation to DLNR without restriction or statement of condition. The wording of the statute in 196D-10(a) should be included to clearly indicate that the transfer of functions is only for the particular types of developments noted.

(2) It should be noted by rule that the changes in land use boundaries and zoning made by DLNR under chapter 196D are contingent upon the ultimate approval of the project and should revert to their previous designations upon decommissioning of the project.

(3) The syntax and paragraph structure of this section needs to be clarified to eliminate ambiguity. It is unclear, for example, except by implied context, whether the wording at the top of page 185-6 refers to the "petition" for intervenor status or the "petition" for a district boundary change.

(4) Subsection (b) regarding zone changes offers only that "permits may be offered at the department's discretion" as a standard. This is clearly not sufficient guidance to an applicant or opponent of a zone change upon which to prepare a case, and is certainly not sufficient grounds upon which to base any findings of fact. Note that the Hawaii Supreme Court has not allowed agencies even the appearance of being arbitrary or capricious (see *Ainoa v. Unemployment Comp. Appeals Div.*, (1980) and precedents noted therein.)

13-185-7

This section provides in accordance with 196D-8 that DLNR provide information services for the benefit of potential applicants. DLNR should establish by rule that these services are for all interested persons. There is no definition of "potential applicants." Certainly these services should not be restricted to exclude the general public.

13-185-9

Subsection (b) directs the department to perform a number of services for the benefit of an applicant. One provision directs the department to "assist the applicant in applying directly to...agencies." This directive goes beyond that of the statute and perhaps further than is prudent. It should be made clear that the department is not applying for permits from other agencies, either in name or actual practice. This is not an appropriate role, even for an agency responding to legislative intent to provide streamlining measures. Similarly the directive to "provide advice" should be explained so as not to put the department in a position of acting as attorney for the applicant regarding applications to other agencies.

If the rules are going to direct the department to provide these services, they also need to define limitations on how far the department will go in these regards. DLNR should provide guidance to its staff to clearly distinguish between the various roles of individual personnel it assigns to the necessarily separate functions of:

- (1) an adjudicatory body conducting contested case proceedings regarding functions transferred under 13-185-10 and other DLNR rules,
- (2) an intervenor in these proceedings as required by 13-185-4,
- (3) an advocate for applicants pursuant to these and other proceedings as required by 13-185-7 and 13-185-9,
- (4) a final authority over administrative conflicts as defined by 13-185-14, and
- (5) a coordinator of county, state and federal agencies regarding the provisions of 13-185-11, 13-185-12 and 13-185-13.

In order to preserve the legality of contested case proceedings it will be necessary to distinguish certain of these functions from one another, separate personnel according to their roles and make provisions to protect against inappropriate ex parte communication. In this regard DLNR should consider the wording of section 13-185-9 to limit or place conditions upon the context and extent to which it will "assist" applicants.

13-185-10

The fees proposed here are a pittance. A county building permit for a typical 2000 square foot house exceeds the DLNR application fee for a billion dollar development that will occupy numerous DLNR staff on a full-time basis for a considerable period

of time. It is unclear what the purpose of the fee is. The present amount will clearly not even cover the costs of compiling and photocopying the required information to meet the requirements of 13-185-7.

The State of Oregon requires a Site Certificate for geothermal projects that are larger than 25 megawatts. A fee of \$5000 is required at the time of filing a notice of intent which is credited towards an ultimate fee of \$.05 per kilowatt or \$1000 for each \$1 million of estimated capital investment, but in no case less than \$15,000. Additionally an annual fee of \$.025 per kilowatt is assessed to cover ongoing costs of regulation.

DLNR does not have all of the regulatory responsibilities associated with the fees charged by the State of Oregon, however, the order of magnitude of Oregon's fee schedule much more realistically reflects the costs of regulation of large energy facilities. Perhaps the State of Hawaii does not foresee the costs of regulation for these facilities or see the wisdom of sharing the regulatory burden with the corporations that operate these facilities and who often appear before the state in an adversarial position regarding matters of public and/or environmental interest.

The proposed fee schedule needs to be increased by a few orders of magnitude and needs to be proportional to kilowattage or project costs well beyond the \$10 million level. Note that \$.05 per kilowatt is less than one half of one hundredth of one percent of the cost of generating facilities that typically cost well over \$1000 per kilowatt.

Comments Regarding Adequacy of Siting Regulations

The Hawaii Legislature states in its findings and declarations of purpose for the statute to which these rules are pursuant that:

"The development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State."

The legislature has acted to simplify the procedures for application for the permits required for these facilities, but it has not recognized the need for some basic regulatory measures to protect the interests of the people of Hawaii regarding the magnitude of impacts that can be anticipated by large electrical generation projects. In no other arena, excepting perhaps the recent oil spill in Alaska, has the public been left to suffer such extensive economic and environmental consequences of regulated industrial developments as in the many cases of

unnneeded, nonfunctioning, mismanaged or poorly engineered electrical generation projects.

Any project that costs hundreds of millions of dollars that will certainly be charged to electrical ratepayers deserves a thorough regulatory review to establish the need for and cost effectiveness of the project. Proposed geothermal developments are anticipated to cost in the vicinity of \$1.7 billion. Based upon number of customers and average use this works out to be an investment of over \$5000 per residential customer. This is equivalent to a rate impact of over \$50 per month per residential customer.

By what mechanism are the economic interests of ratepayers protected? In what forum can they represent their concerns? The public utilities commission approves rates based upon new facilities after they are completed and have accrued debt. The decisions made on whether or not to build large energy facilities are made by boards of directors representing the interests of utility stockholders who make money by spending money to be included in utility rate bases to be financed by ratepayers. The State of Hawaii has no regulatory forum by which ratepayers or citizens can participate in decisions for which they will be held financially accountable.

Similarly, the State of Hawaii has no regulatory provisions to assure that:

applicants have the financial, technical and managerial abilities to construct, operate and decommission energy facilities, without their becoming a burden to county or state governments,

the energy facilities will in fact be decommissioned at the end of their productive lifetimes, or that

other preferable alternatives are not reasonably available.

These issues are not directly relevant to the rules being considered presently by DLNR which are primarily procedural in nature. However, the absence of statutory language or administrative rules that address these important issues begs comment in all forums that consider large energy facility siting regulation.

CORRECTION AND ADDENDUM TO:

COMMENTS OF CARL FREEDMAN,
908 HANA HWY.
HAIKU, HI., 96708

REGARDING PROPOSED ADMINISTRATIVE RULES
OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 185

RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL
AND CABLE SYSTEM DEVELOPMENT PERMITTING

6/19/89

The first full paragraph of page six of the testimony cited above states financial information regarding the magnitude of the potential rate impacts of a \$1.7 billion project upon Hawaii residential electrical customers. The word "residential" should be deleted in both instances. The amounts stated are correct for the average of all customers.

Investment of 1.7 billion in a geothermal project is an investment of over \$5000 per electrical utility customer which is the equivalent to a potential rate impact of over \$50 per customer. Based upon average use this breaks down into an impact of over \$20 per month per residential customer and over \$300 per month per non-residential customer.

These statistics are stated as order-of-magnitude figures to provide some sense of scale regarding the size of the projects being considered by these rules and the importance of careful consideration of their impacts. The estimated costs are based on simplistic means, but are a reasonable estimate for the purposes noted.

Investment per customer is calculated by simple division of the project cost by the number of Hawaii utility customers. Cost per month assumes a 12% annual rate of return on this investment regardless of whether it is recuperated as return for assets included in the utility rate-base or as capital costs associated with electricity sold to the utility by an independent project owner. Costs are apportioned to residential and non-residential customers based upon average use per customer.

These cost statistics are not to be interpreted as estimates of the actual costs to consumers. If the project is successful it

will certainly offset the substantial marginal generation costs associated with other displaced generation facilities, most notably fuel use. If a geothermal project is truly cost-effective it may not cost consumers anything in the long run when compared to other alternatives.

Investment per customer and its gross potential impact upon rates are appropriate statistics to use in assessing potential impacts of new generation capacity, especially when:

(1) the costs of power from the project are almost entirely capital costs which must be recuperated even if the project operates below expected capacity factors,

(2) there is some risk regarding the ultimate successful operation of the project, and most importantly

(3) there are no regulatory standards governing the need for or cost effectiveness of the project and no assurances of the financial, managerial or technical ability of an applicant to build and operate the project.

For generation facilities owned and operated by private non-utility entities, the financial risks and impacts to customers hinge upon the contractual agreements with the utility that purchases the power. Traditionally it has proven very difficult for private non-utility enterprises to raise the vast capital investments required for such facilities without very strong assurances from the potential purchasing utilities for the ultimate purchase of the generated power. In some cases utilities have promised contractually to purchase the expected output of a facility even if it produces little or no power. This serves to lower the cost of capital towards that of municipally-backed securities, but does nothing to protect the interests of electrical rate-payers. Hawaii has no up-front regulatory review of such utility electrical purchase agreements.

Council Chairperson
Goro Hokama

Council Vice-Chairperson
Howard S. Kihune

Council Members
Linda Crockett Lingle
Pat S. Kawano
Alice L. Lee
Rick Medina
Wayne K. Nishiki
Velma M. Santos
Joe S. Tanaka



Gwen Yoshimi-Ohashi
Director of Council Services

COUNTY COUNCIL

COUNTY OF MAUI

200 S. HIGH STREET

WAILUKU, MAUI, HAWAII 96793

June 20, 1989

Mr. William W. Paty
Chairperson
State Board of Land and
Natural Resources
Board Room, Room 132
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Paty:

Thank you for the opportunity to offer testimony on Chapter 185, "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting."

Act 301, Hawaii Revised Statutes, states "the development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State." The total cost for exploration, drilling, laying of cable and plant construction is estimated by HECO to be 1.7 billion dollars. A sizeable sum of taxpayer's money has already been spent on research and development. The State Department of Business and Economic Development estimates that the state alone has spent around 13 million dollars on geothermal and cable research and development (5 million of this went solely for research on the cable). The federal government has spent over 30 million with 23 million of this for research on the undersea cable. To add to these already astronomical figures, private sources have spent an additional 20 million. All of this for a project which depends on the success of an underwater cable system which has yet to be tested in the ocean and whose economic feasibility has yet to be proved.

Act 301 and Chapter 185 which we are considering tonight are designed to consolidate and streamline the geothermal permit application and review process for the benefit primarily of the developer--to make it easier for geothermal developers to make their way through the permitting process maze.

While I appreciate the need to reduce our consumption of fossil fuel in an effort to promote cleaner air, decrease the Greenhouse effect, and lessen our dependence on unstable foreign governments, I, as a public servant, feel that some basic questions need to be asked to make certain that the needs of the public are being met.

On a best case basis the rules are vague, confusing, and open to multiple interpretations. On a worst case basis, they appear to limit or even take away the authority of the Counties through their Planning Commissions to regulate geothermal development insofar as the cable is concerned. They allow for the transfer of functions from the state land use commission in matters of district boundary amendment and zoning changes in regard to geothermal resource subzones without a similar transfer of accepted standards used by the land use commission to reclassify land. They fail to specify details of the application and review process so that it is unclear both to the developer and the public exactly what information is required and what criteria will be used to evaluate and ultimately to award permits for development. If these matters are to be left to the Counties, then what exactly are the specific responsibilities of the interagency team established in the rules and what is the purpose of the permit for development? Finally the rules appear to establish a questionable precedent by permitting the lead agency, DLNR, which is responsible for making final decisions about permits, to also be the agency which assists developers through the permitting process.

Geothermal development is a major concern to Maui and to all Hawaii. According to HECO, the cable will come aground from Hawaii in the Kipahulu area of Maui. From there huge electrical transformers and lines will follow the road alongside the ocean to the other side of the island where the cable will pass under the ocean between Maui and Kahoolawe and Lanai and between Lanai and Molokai on its way to Oahu. In situations like this where Maui's already fragile marine life and shoreline are involved, I find it pays to ask questions.

When asked why the cable could not be run on the other side of the island to avoid prime breeding and birthing grounds for the humpback whale, HECO said this had not really been considered because the distance is so much shorter and the depth much more shallow on the Kihei side.

The problems with these rules may come from a similar failure to consider their implications. The matter is of primary importance to Maui County since Council will soon consider an ordinance to regulate geothermal development and the Planning Commission will be presented with rules®ulations for geothermal development as well.

I have attached a list of questions and concerns with references to the appropriate sections of the rules. I would appreciate the opportunity to meet with representatives of DLNR either privately or in a Council committee meeting to discuss the answers to these questions and to receive clarification of any other portions of the rules which may result as a part of public testimony.

Again I am grateful for the opportunity to offer questions in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'WKNishiki', written over the printed name.

Wayne K. Nishiki
Councilmember

WKN:bjf

Questions and Concerns

1. Do Act 301 and the proposed rules take away or limit the authority of County Planning Commissions and/or County Councils to regulate geothermal and cable permitting? I am concerned about the language of Section 13-185-9, p. 185-9, which says that the department "shall require State and county agencies so notified to participate in the consolidated permit application and review process." "Agency" is defined in Section 13-185-2, p. 185-2 as "any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development."

If in fact County Planning Commissions are required to participate in the consolidated permit application and review process, then under the terms of Section 13-185-14 (b), p. 185-15, they are required to negotiate with DLNR should a conflict occur. In such a case an impasse can be declared and if this impasse cannot be resolved, then "the administrative director," which I presume to be from DLNR, will "render a decision." This in effect takes away the power of the County Planning Commission to regulate geothermal development. If, for example, the Planning Commission decides not to give a permit to a certain developer and the DLNR or some other member of the interagency group deems that the developer should have the permit, the matter could be called a conflict and opened up to procedures for settling an impasse. "The administrative director" could decide in favor of the developer and thus overturn the decision of the Planning Commission.

I would appreciate comments of whether or not this is the effect of the rule and if this is not DLNR's intention, then I would like the rule to be clarified.

Act 301 is confusing especially between sections 5-b and 5-b-(5). Again the question arises of exactly what the permit required by the Act is for and what the interagency team is really trying to accomplish.

2. Under section 13-185-3, p. 185-4, Transfer of Functions, the rules transfer to DLNR the functions of the land use commission related to changes in zoning as set forth in section 205-5. There are few functions of the state land use commission related to zoning. These are primarily matters left to County Councils. Does this language attempt to take away the responsibility of Councils in this area?
3. Under this same section, I would like to see the same standards applied here which the state land use commission normally uses in making decisions to reclassify land.

Questions and Concerns continued

4. I would like specific details of what information must be included in the application process. Nothing is provided in Section 13-185-4 or 9. What are the criteria for determining whether or not someone will receive a permit? I would like to see this information included in the rules and be open to public discussion and hearing before it is formally adopted.
5. Under section 13-185-5, p. 185-7, I would like to know why the rules call for contested case hearings when, to my knowledge, the law now calls for mediation.
6. Section 13-185-14 needs a clearer statement of what issues can be considered in declaring an impasse so that a County's Planning Commission can not have its decisions overturned when it has met the requirements of its own ordinance or rules to the best of its ability.

GENERAL ATTENDANCE SIGN IN SHEET

NAME _____

ADDRESS
AND PHONE NO.

ORGANIZATION

[illegible]

GEOTHERMAL PUBLIC HEARING

ACT 301 - ADMIN. RULES
JUNE 21, 1989 - MAUI

PLEASE PRINT CLEARLY

INDIVIDUALS WANTING TO SUBMIT ORAL OR WRITTEN TESTIMONY
SIGN IN SHEET

[illegible]

PUBLIC HEARING (OAHU) ON ADMINISTRATIVE RULES
TO IMPLEMENT ACT 301, SLH 1988

Hearing was held in the Board Room of the Department of Land and Natural Resources, Kalanimoku Building. The undersigned called the hearing to order at 7:05 p.m. Testimonies and comments were offered by the following:

1. Mr. Richard L. O'Connell, Vice President, Hawaiian Electric Co. He submitted written testimony, a copy of which is attached. In addition to written statement Mr. O'Connell requested that the Department of Land and Natural Resources explore possibility of making one environmental impact statement satisfy county, State and federal requirements. He thought the county requirement on EIS matters were not consolidated.
2. Cynthia Thielen, Attorney representing Puna Community Council. She submitted written testimony. In addition to written comments, she reemphasized that conflict resolution section needs more work to eliminate possibility of legal challenge. She also stressed the need to have the public involved in monitoring and assisting in enforcing permit conditions. Should there be a violation public should have recourse to correct situation Cynthia also asked if the public would be able to review draft before rules finalized. I told he I didn't know - that I did not want to offer an opinion not knowing what the other hearing officer's position was on this question but that we will let her know one way or another.
3. Gordon Chapman, consultant. He will submit written testimony before July 7, 1989, the submission deadline. He commended the staff for drafting a good set of rules.
4. Karen Shimizu, SERVCO Pacific. She attended as an observer. She did not present testimony.

Before adjourning I made copies for those in attendance of the written testimonies and the opening remarks made by hearings officer.

The hearing adjourned at 7:30 p.m.

Ralph Patterson, consultant, arrived after hearing adjourned. He had no comments.

Sus Ono

TESTIMONY BEFORE THE
DEPARTMENT OF LAND AND NATURAL RESOURCES
ON
PROPOSED ADMINISTRATIVE RULES FOR
GEOTHERMAL AND CABLE SYSTEM
DEVELOPMENT PERMITTING

June 21, 1989

By

Richard L. O'Connell
Vice President
Hawaiian Electric Company, Inc.

Mr. Chairman:

My name is Richard O'Connell and I represent Hawaiian Electric Company and its subsidiary companies. I am pleased to have the opportunity to testify in favor of the proposed administrative rules to implement Act 301.

The State administration and the legislature have through the State General Plan and various legislative acts created policies which are directed toward a reduction in the importation of fuel oil for the production of electricity. The Hawaiian Electric Company and its subsidiary companies support these policies.

The development of geothermal resources on the island of Hawaii for the production of electricity could assist in reducing the dependence on fuel oil if the electricity thus generated could be sent to a market for sale at an acceptable price. Oahu provides the largest market in the state for the use of

electricity produced from geothermal resources.

Transmission of electricity produced by geothermal resources from the island of Hawaii to Oahu will require the installation of an overland and submarine cable transmission system. Such an installation will require the developer of a project to obtain various permits from federal, state, and county agencies.

The proposed rules to implement Act 301 can be of great assistance to a developer through consolidated permitting in a logical sequence by the cooperative effort of the various agencies involved. This cooperative effort would save time and reduce cost for the various governmental agencies and the developer by elimination of duplicative effort. It would also enhance more effective public participation in the overall process.

Hawaiian Electric Company and its subsidiary companies support the proposed administrative rules for Act 301 as we believe this represents an additional step towards implementation of the State policy to reduce importation of fuel oil for the production of electricity. Accordingly, we urge the prompt adoption of these rules.

Thank you.

CYNTHIA
THIELEN

ATTORNEY AT LAW

345 Queen Street
Suite 700
Honolulu, Hawaii
96813

Telephone
808/599-4141
Facsimile
808/521-3566

June 21, 1989

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Proposed Administrative Rules for Geothermal and Cable System
Development Permitting

To Whom It May Concern:

I.

INTRODUCTION

On behalf of the Puna Community Council, I am submitting comments on the Proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting (hereinafter "proposed Administrative Rules") of the Department of Land and Natural Resources (hereinafter "DLNR"). The proposed Administrative Rules are intended to implement the Geothermal and Cable System Development Permitting Act of 1988, Act 301, Session Laws of Hawaii, 1988 (hereinafter the "Act"). DLNR cannot through the proposed Administrative Rules confer upon itself, power and authority in excess of the statutory authority set forth in the Act.

II.

COMMENTS

Comments on the proposed Administrative Rules follow the sequence of the regulatory provisions and are not listed in order of importance.

A. Section 13-185-2 Definitions.

A definition for "Intervenor" should be included in this section and should provide: "Intervenor" means a person or agency who can show a substantial interest in the matter.

B. Section 13-185-3 (a). Transfer of functions.

1. Intervention. The ability to intervene is severely restricted. The proposed Administrative Rules provide that persons must "demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public. . ." (Emphasis added.) This stringent standard would grant the DLNR power to deny admission to virtually any person. Existing Administrative Rules of State and County agencies do not contain such unwarranted restrictions.

The language should be changed by replacing the above section with the following:

All other persons may apply for leave to intervene, which shall be freely granted, provided the department may deny

an application to intervene when, in the department's discretion it appears that:

- (1) The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

See, Section 15-15-52(c), Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules.

In other words, this revision would require that the position of intervenor be substantially the same as existing parties and the admission of additional parties would make the proceedings unmanageable and inefficient. The test is conjunctive which protects the right of persons to freely intervene. See, Akau v. Olohana Corporation, 65 Haw 383, 386-390 (1982); and see expansive standards allowing various organizations standing to challenge agency action enunciated by the Hawaii Supreme Court in Mahuiki v. Planning Commission, 65 Haw. 1, 7-8 (1982); Life of the Land, Inc. v. Land Use Commission, 63 Haw. 166, 171-77 (1981); Life of the Land v. Land Use Commission, 61 Haw. 3, 6 (1979); Waianae Model Neighborhood Area Ass'n v. City and County, 55 Haw. 40, 43-44 (1973); E. Diamond Head Ass'n v. Zoning Board; 52 Haw. 518, 523-24 (1971).

As presently drafted, the proposed Administrative Rules permit DLNR to deny leave to intervene from any member of the public in either instance: if the position is the same as an admitted party or if addition of a party would make the proceedings inefficient and unmanageable. Although the Petitioner would qualify for intervention, the DLNR could deny the application if it decides intervention could make the ~~district boundary amendment~~ proceeding "inefficient" and "unmanageable." This grant of authority should be eliminated from the proposed Administrative Rules as it conflicts with the liberal judicial standards approving standing for community organizations. Id.

2. Appeal of Denial. A provision should be added providing for direct appeal in the event intervention is denied:

A person whose application to intervene is
denied may appeal such denial to the Circuit

Court pursuant to Section 91-14, HRS.

See, Section 205-4(e)(4), HRS.

C. Section 13-185-3(b). Transfer of functions (continued).

This section of the proposed Administrative Rules empowers DLNR to grant special use permits ("SUP") within agricultural and rural districts. This is a County function. See Section 205-6, HRS.

Counties have jurisdiction over uses within agricultural and rural districts involving land of less than fifteen acres; for land

areas greater than fifteen acres, the County planning commissions' decision is subject to the Land Use Commission's ("LUC") approval, approval with modifications, or denial. Id. Only this latter function of the LUC may be transferred to the DLNR. Accordingly, section 13-185-3(b) should be redrafted to make it clear the DLNR is not usurping authority of the Counties. See, the Act, Sections 196D-9 and 196 D-10, (a)(1), HRS.

D. Section 13-185-4. Consolidated permit application and review process.

This section provides that the jurisdiction and authority of any agency under the existing law is not affected or invalidated "except to the extent that permitting functions have been transferred to the department for the purposes of the project . ." (emphasis added).

Does this provision mean those functions only of the Land Use Commission and Department of Transportation which are transferred by the Act, Section 196D-10(1)(2), HRS, or does the provision imply that permitting functions not authorized by the Act are to be transferred at the discretion of the agency? This unclarity could be eliminated by adding "by the act" after the word "transferred."

E. Section 13-185-5 Contested Case Provisions.

1. If an agency is to issue permits sequentially, are all the permit applications required to be submitted at one time in order that that agency, county or state, can address all issues

at the single contested case proceeding? The first sentence of this section should be reworded to clarify that the contested case would address all permit applications to be issued by the agency which are subject to contested cases.

2. The second sentence providing for appeal from a decision should include "appeal from a decision made by the agency pursuant to a contested case,"

F. Section 13-185-6, Streamlining.

The second sentence provides:

The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting for geothermal and cable system development projects.

It is unclear if this sentence means the purpose of DLNR permit tracking is to allow DLNR to "consolidate permitting for geothermal and cable system development projects" or if that provision only defines why certain permitting functions were transferred to DLNR. If it is the latter case, the words are superfluous and should be eliminated. If it is the former case, the legislature has not granted this authority to DLNR.

G. Section 13-185-14 Conflict resolution process.

The Act provides that a mechanism to resolve conflicts shall be incorporated into the consolidated permit application and review process. Section 196 D-4(b)(5), HRS. Section 13-185-14 of the proposed Administrative Rules sets forth the conflict resolution process. In the event conflict between state and county agencies cannot be resolved, the proposed Administrative Rules provide in Section 13-185-14(b):

The administrative director or the administrative directors' designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

Where a county permitting authority is in conflict with a state agency over a permit application, this section removes the county's

jurisdiction over the permit. The state administrative director renders a decision and the county must implement the state decision forthwith.¹

This section exceeds the statutory authority in the Act, Section 196D-4(b)(5), HRS; this section violates Section 196D-5(c)(5) of the Act which states:

The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the department for purposes of the project.

See also, Section 196D-9, HRS, Construction of the Act; rules:
"[the DLNR has the authority to make rules to implement the Act] provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law."

H. Section 13-185-15. Monitoring applicants' compliance with terms and conditions of permits.

This section of the Proposed Administrative Rules sets forth the scheme for monitoring and, if necessary enforcing the

¹A similar provision applies to conflict between State departments with the Governor rendering the decision.

Department of Land and Natural Resources
Division of Water and Land Development
June 21, 1989
Page 9

geothermal and cable systems development applicant's compliance with permit terms and conditions.

Article XI, Section 9, of the Constitution of the State of Hawaii gives the public standing to enforce, through the courts, laws relating to environmental quality which include conservation, protection and enhancement of natural resources and control of pollution. Section 13-185-15 of the Proposed Administrative Rules should include a provision by which an organization or private party can sue for injunctive relief where the applicant is violating permit terms and conditions, and the DLNR is not enforcing compliance.

III

CONCLUSION

Please address any response to these comments to my address with a copy to the president of the Puna Community Council:

Ron Phillips, President
Puna Community Council
Star Route 1100
Keaau, Hawaii 96749

DATED: Honolulu, Hawaii _____.

Respectfully submitted,

CYNTHIA THIELEN

JUL 07 '89 16:23 HQHONO

P01

MID-PACIFIC GEOTHERMAL, INC.

Exploration Development Marketing of Geothermal Resources

TELECOPIER TRANSMISSION

TO: DEPARTMENT of LAND
+ NATURAL RESOURCES
GEOTHERMAL Permitting
CENTER

FAX NO.: 548 6233

Telephone: _____

FROM: Rod Moss
Mid Pacific Geothermal, Inc.

FAX No.: 808-536-7646

MID-PACIFIC GEOTHERMAL, INC.

Exploration Development Marketing of Geothermal Resources

July 7, 1989

Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809


RE: Rules for Geothermal and Cable
System Development Permitting

Dear Sirs:

The referenced rules have been reviewed and are concurred in by True/Mid-Pacific Geothermal venture. We believe that the permitting of the geothermal/interisland cable project would not be feasible without the new procedures reflected in these rules.

Very truly yours,

MID-PACIFIC GEOTHERMAL, INC.


Rod Moss
Vice President

TRUE GEOTHERMAL ENERGY COMPANY

Allan Kawada

[illegible]

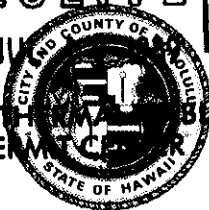
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DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813 • (808) 523-4432

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JUL 17 1989



GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT
PERMITTING ACT

39 JUL 17 AID: 07

JOHN P. WHALEN
DIRECTOR

DIV. OF WATER & LAND DEVELOPMENT
BENJAMIN B. LEE
DEPUTY DIRECTOR

LU5/89-3100(RF)

FRANK F. FASI
MAYOR

ENCLOSURES
ATTACHED

July 13, 1989

Mr. William W. Paty, Chairperson
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Attention: Division of Water and Land Development

Dear Mr. Paty:

Draft Administrative Rules for
Geothermal and Cable System Development
Permitting Act of 1988

We have reviewed the draft rules and have the following comments:

1. The rules apply only to executive agencies (Sec. 13-185-2, Definitions). As we have stated previously, the City Council decides on any Development Plan Map amendments and on any Special Management Area Use Permits. While the Department of General Planning (DGP) and the Department of Land Utilization (DLU) can participate in the review team and the joint application processing agreement for portions of application processing delegated to them, these agencies cannot commit the City Council to a timetable or any other obligation.
2. Section 1-9.2, Revised Ordinances of Honolulu (ROH), requires that an agency must receive City Council approval (by resolution) before entering into any intergovernmental agreement. Before signing a joint application processing agreement for the geothermal cable project, DLU, DGP or any other City agency would have to obtain City Council's approval.
3. The first sentence of Section 13-185-15 contains the clause, "Once a geothermal and cable systems development permit application has been approved by the review team..." This language is incorrect, since the review team is not empowered to approve any permit application.

Mr. William W. Paty

Page 2

July 13, 1989

Thank you for the opportunity to comment. If you have any questions, please contact Robin Foster of my staff at 527-5027.

Very truly yours,



JOHN P. WHALEN

Director of Land Utilization

JPW:fm

cc: Corporation Counsel (Attn.: Nalani Wilson-Ku)

Dept. of General Planning

County of Hawaii Planning Department

County of Kauai Planning Department

County of Maui Planning Department

0045N

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OFFICE OF THE MAYOR

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CITY AND COUNTY OF HONOLULU

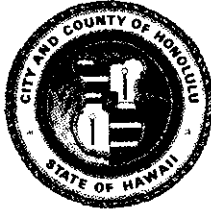
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FRANK F. FASI
MAYOR

DIV. OF WATER &
LAND DEVELOPMENT



March 2, 1989

RECEIVED
DIVISION OF LAND & NATURAL RESOURCES
STATE OF HAWAII
MAR 6 PM 12:59

Honorable William W. Paty
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Paty:

Bill

Thank you for your letter of February 27, 1989, enclosing the draft Administrative Rules for Act 301, SLH 1988, relating to Geothermal and Cable System Development permitting.

I have referred this matter to the Chief Planning Officer and the Director of Land Utilization and I have asked the latter to respond to you directly.

We appreciate the opportunity to review these rules.

Warm personal regards.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank', with a long horizontal stroke extending to the left.

FFF:fe

JOHN WAIHEE
GOVERNOR OF HAWAII

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT

P. O. BOX 3390
LIHUE, HAWAII 96766

DEPT. OF WATER &
LAND DEVELOPMENT

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

June 23, 1989

MEMORANDUM

TO: Mr. Manabu Tagamori
FROM: Sam Lee
SUBJECT: June 21, 1989 Public Hearing for Proposed
Rules - Geothermal and Cable System
Development Permitting

The subject hearing was opened at 7:00 PM
and closed at 7:15 PM.

No one showed up to testify.

A handwritten signature in black ink, appearing to read "Sam Lee".

SAM LEE
Land Agent

cc: Mr. Mike Shimabukuro
Mr. Herbert Apaka, Jr.
Mr. S. Ono

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 3390
LIHUE, HAWAII 96766

AQUACULTURE DEVELOPMENT
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CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

June 23, 1989

MEMORANDUM

TO: Mr. Manabu Tagamori
FROM: Sam Lee
SUBJECT: June 21, 1989 Public Hearing for Proposed
Rules - Geothermal and Cable System
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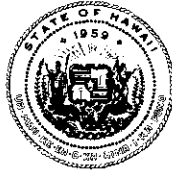
The subject hearing was opened at 7:00 PM
and closed at 7:15 PM.

No one showed up to testify.

A handwritten signature in cursive script, appearing to read "Sam Lee".

SAM LEE
Land Agent

cc: Mr. Mike Shimabukuro
Mr. Herbert Apaka, Jr.
Mr. S. Ono



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION, WATER &
HARBORS DIVISION
LAND DEVELOPMENT
79 SO. NIMITZ HWY • HONOLULU, HAWAII 96813

IN REPLY REFER TO:

May 19, 1989

HAR-ED 4293

MEMORANDUM

TO: Manabu Tagomori, Manager-Chief Engineer
Division of Water and Land Development
Department of Land and Natural Resources

FROM: Deputy Director for Harbors

SUBJECT: Review of Act 301, SLH 1988, "Geothermal and Cable
System Development Permitting Act of 1988" Proposed
Administrative Rules, Section on Functions
Transferred from Department of Transportation to DLNR

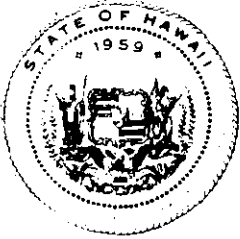
We have reviewed Act 301, SLH 1988, Section 185-13-3, which transfers certain functions of the Department of Transportation to DLNR relating to geothermal and cable system development permitting and have no objection. However, a copy of the construction plans for any proposed geothermal and cable system development should be forwarded to our department for our files.

Thank you for the opportunity to provide comments.

Dan T. Kochi
Dan T. Kochi

STATE OF HAWAII

DEPARTMENT OF BUSINESS
AND ECONOMIC DEVELOPMENT



LAND USE COMMISSION

Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

JOHN WAIHEE
Governor

RENTON L.K. NIP
Chairman

LAWRENCE F. CHUN
Vice Chairman

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10 JUN 21 P 3: 15

June 21, 1989
DIVISION OF WATER &
LAND DEVELOPMENT

COMMISSION MEMBERS:

Sharon R. Hirono
Teofilo Phil Tacbían
Allen Kajlaka
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. Hoe

ESTHER UEDA
Executive Officer

Mr. Manabu Tagomori
Manager-Chief Engineer
Division of Water and Land Development
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Tagomori:

Subject: Draft Hawaii Administrative Rule, Title 13,
Subtitle 7, Chapter 185, Rules of Practice and
Procedure for Geothermal and Cable System
Development Permitting.

Thank you for the opportunity to review the subject rule.

Our comments are as follows:

- 1) Section 13-185-3(a)
We request that copies of all applications for boundary changes and notification of all changes be sent to the Land Use Commission in order that we may review proposed changes with respect to accuracy of the district boundaries and make appropriate changes to the official state land use district maps.
- 2) We note that there are no provisions relating to enforcement of reclassifications, and suggest that some provisions should be considered.
- 3) In terms of enforcement, we note that there are no provisions to address what will happen to an area reclassified for geothermal system and cable development, which subsequently no longer becomes needed for that purpose. Some procedures should be considered for reversion of the property to its original classification in those instances.
- 4) Clarification should also be provided regarding whether or not if an area is reclassified for geothermal and cable development, other uses can be permitted in the area.

Mr. Manabu Tagomori
June 21, 1989
Page Two

5) Clarification should be provided as to what criteria will be used to reclassify lands for geothermal and cable development purposes and issue Special Permits. Are the decision-making criteria used by the Land Use Commission applicable to reclassifications for geothermal and cable development purposes? If so, the criteria should be specified or an incorporation or reference to LUC rules is appropriate.

If you have questions regarding any of our comments, please feel free to contact me at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to